

REQUEST FOR CHANGE TO AGENDA CONFERENCE
HAND DELIVER

ORIGINAL

Date of Request: May 14, 2004 Date of Agenda Conference: May 18, 2004 Item No. 5

Docket No.: 020645-TI, 031031-TI, 040062-TI, & 040289-TI Brief Title: Compliance Investigation for apparent violations of Rule 25-4.118, F.A.C., slamming.

Requested by: Staff Other Optical Telephone Corporation (Name)

Please attach a copy of the written documentation filed (if other)

STAFF's Recommendation to Executive Suite (IF OTHER) Approve Request Deny Request

ACTION REQUESTED [see APM 2.11]

- Defer Item to Agenda Scheduled Date: June 29, 2004
- Change Order of Item or Take Up at Time Certain
- Withdraw Item
- Late Filed Recommendation (must be filed no later than 3:00 p.m. on the date approved for late filing) **A copy of the front page of the recommendation must be provided to CCA by 12 noon on the regular filing date for use as a place-holder during agenda preparation.**
- Add Item to Published Agenda [see Section 120.525(2), F.S.] - Issue an ADDENDUM and give Legal NOTICE
- Add Emergency Item to Published Agenda [see Section 120.525 (3), F.S.] - Issue an ADDENDUM and Give Fair NOTICE

Concise explanation, justification or comments (attach additional sheet if necessary):

Optical Telephone Corporation (Docket No. 040289-TI) submitted a request to defer Item 5 from the May 18, 2004, Agenda Conference to allow the company time to provide staff with additional factual information related to the case background in staff's recommendation. A copy of the company's deferral request is attached.

In addition, New Century Telecom, Inc. (Docket No. 040062-TI) submitted a settlement offer to staff via email, dated May 12, 2004 (copy attached).

Staff recommends that the deferral request be approved to allow staff time to review New Century Telecom's settlement proposal and Optical Telephone Corporation's additional information and explanation.

Signature (OPR Staff): [Signature] Initials (OPR Division Director or Designee): [Initials]

Signature (Legal Staff): [Signature] Initials (Legal Division Director or Designee): [Initials]

EXECUTIVE DIRECTOR:

CMP Recommendation to the Chairman's Office

COM Initials: [Initials]

CTR Comments:

ECR

GCL

OPC Initials: [Initials]

MMS

RCA

SCR

SEC 1

OTH Boyo PSC/EXD-1 (10/02)

Thompson
Honda

Approve Request Deny Request
Date: 5/14/04

Approve Request Deny Request
Date: 5/17/04

Executive Suite will send the original to the Division of Commission Clerk and Administrative Services and return a copy to the requesting staff after the Chairman's Office takes action on this request. Requesting staff should distribute copies to the Division Directors (OPR & OCR) and Attorney assigned to the docket.

DOCUMENT NUMBER-DATE

05622 MAY 17 04

FPSC-COMMISSION CLERK

RECEIVED-FPSC
MAY 17 AM 8:59
COMMISSION CLERK

MCWHIRTER REEVES
ATTORNEYS AT LAW

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602-5126
P.O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 Fax

PLEASE REPLY TO:
TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 Fax

FACSIMILE COVER SHEET

To: Dr. Mary Bane, Executive Director FPSC
TeleFax Number: 413-6067

CC: Carris L.Fordham - Fax No. 413-6227
Adam Teitzman - Fax No. 413-6176
Ray Kennedy - Fax No. 413-6585

FROM: Joseph A. McGlothlin

DATE: May 14, 2004

RE: Docket No. 040289-TI
O089/15359

MESSAGE OR SPECIAL INSTRUCTIONS:

Please see attached letter regarding Optical Telephone Corporation.

Following is a facsimile consisting of 3 page(s), including this telefax cover sheet. If you should have any problems in receiving this facsimile, please contact Flora Taylor at (850) 222-2525.

Original Documents **will/will not** follow by mail.

This facsimile contains **PRIVILEGED AND CONFIDENTIAL** information intended only for the use of the addressee(s) named above. If you are not the intended recipient of this facsimile, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile to us at the above address via U.S. Mail. We will reimburse you for postage. Thank you.

MCWHIRTER REEVES
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P.O. BOX 3350, TAMPA, FL 33601-3350
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May 14, 2004

BY FACSIMILE
Fax No. 413-6067

Dr. Mary Bane, Executive Director
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 040289-TI, Optical Telephone Corporation

Dear Dr. Bane:

On behalf of Optical Telephone Corporation, I respectfully request the Commission to defer its consideration of the above docket, which is currently on the agenda for the conference of May 18, 2004, so that Optical Telephone Corporation may provide to the Staff certain information and documentation that Staff's current recommendation does not take into account. Specifically, the information will support the following representations, which we made to Staff during a meeting earlier today:

1. The complaints alleging slamming by Optical Telephone Corporation that are the subject of Staff's recommendation relate to the marketing practices that were in effect prior to the meeting between Staff and Optical Telephone in the spring of 2002 that led to a commitment by Optical Telephone to effect changes to its marketing activities. Optical Telephone Corporation placed all of the modifications to which it committed into effect. In fact, Optical Telephone ceased active marketing in Florida at that time. No complaints relating to sales made following Optical Telephone's letter to Staff dated July 2002 have been received.
2. With respect to its contractual relationships with other companies that are also the subjects of Staff's multi-docket recommendation, Optical Telephone Corporation began terminating its involvement with the other companies named in the recommendation as early as December 2002, and completed the process on May 15, 2003. Its operation has been separate from and independent of those companies for a full year.

MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A.

During today's meeting with Staff, Optical Telephone Corporation committed to provide the supporting information by Friday, May 28, 2004.

Thank you for your consideration.

Yours truly,



Joseph A. McGlothlin

Cc: Carris L. Fordham
Adam Teitzman
Ray Kennedy

(703) 714-1301

chh@thlglaw.com

May 12, 2004

VIA OVERNIGHT MAIL

Dale Buys
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee FL 32399-0850

Re: New Century Telecom, Inc. – Docket No. 040062-TI

Dear Mr. Buys and Staff:

Attached hereto is a proposed Terms of Settlement in Docket No. 040062-TI, the Compliance Investigation of New Century Telecom, Inc. on Rule 25-4.118, F.A.C. In support of the Terms of Settlement the following factors are submitted on behalf of New Century Telecom, Inc. (“NCT”).

Mitigating Factors Under Rule 25-4.118(13)(b):

Under F.A.C. 25-4.118(13)(b), “in determining whether fines or other remedies are appropriate for an unauthorized carrier change infraction,” the Commission is required to “consider the actions taken by the company to mitigate or undo the effects of the unauthorized change.” The following actions by NCT, which must be taken into

consideration by the Commission, mitigate the substantial penalty proposed by Commission Staff in its April 21, 2004 Proposed Agency Action (“PAA”).

1. NCT Followed the Authorization Procedures

One factor to be considered by the Commission is whether the company “followed the procedures required under subsection (2) [of F.A.C. 25-4.118] with respect to the person requesting the change in good faith.” F.A.C. 25-4.118(13)(b)(1). NCT followed the procedures required under subsection (2) by submitting, in all but 6 cases,¹ verification of each customer’s requested change taken by an independent and unaffiliated third party.

Section 258 Bars Use of a Strict Liability Standard:

In the PAA, Staff alleges that NCT submitted inadequate TPVs for 27 customers and that such infraction warrants a fine of \$10,000 for each inadequate TPV. Assessing the maximum penalty on these 27 cases runs counter to the interpretation in *AT&T Corp. v. Federal Communications Commission*, 323 F.3d 1081 (D.C. Cir. 2003). In this case, the court held that Section 258 of the Communications Act does not authorize the use of a strict liability test to determine whether a slamming violation has occurred. Here, these 27 customers did provide authorization for the switch to New Century. The only basis in the PAA for finding an unauthorized change in these 27 cases is NCT’s failure to include in its verification script a “statement that the customer’s change request will apply only to

¹ In the PAA, Staff alleges nine (9) complaints for which NCT failed to provide a third party verification (“TPV”). Three of these complaints (Helen Dykas, Irma Heimgaertner and Shannon Plichta) were customers acquired by NCT from World Communications Satellite Systems, Inc. (“WCSS”) pursuant to an Asset Purchase Agreement. Therefore, no TPV was necessary. NCT’s failure to obtain a waiver of the slamming rules from the Commission prior to the transfer of these customers is, at most, a technical infraction, that is neither willful nor a slam, defined as the intentional switch of service without authorization.

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.” *See* PAA at 17. Ignoring for the moment that this required statement often confuses customers when made, its absence during verification does not detract from the customer’s knowledge that an actual authorization to switch carriers is what is taking place. Accordingly, NCT should not be fined for these deficiencies as if no authorization was obtained.²

With regards to the remaining six (6) cases in which the customer was transferred to NCT pursuant to its purchase of Miko Telephone Communications, Inc.’s (“Miko”) customer base, Staff’s complaint is that NCT “did not request a rule waiver to transfer the customer base pursuant to Rule 25.455(4), F.A.C.” *See* PAA at 17. This allegation appears unrelated to the present investigation for apparent violations of Rule 25-4.118. Notwithstanding, as previously noted, the failure to obtain a waiver prior to transfer under the unique circumstances that applied here does not represent an intention to switch service without authorization. In the one case where the customer claimed she was not a Miko customer at the time of the transfer to NCT (e.g., Alicia Figuero), NCT should not be held responsible, let alone penalized. NCT inherited Miko’s customers in a transfer of customer base resulting from the unauthorized termination of Miko’s network by its underlying carrier. In the exigent circumstances, NCT could do naught else but to rely

² Notably, Staff neglected to disclose three of the complaints included by Staff in this category – Carmen Ramos, Oscar Gomez and Gladys Cruz –in response to NCT’s document request. As such, Staff should be precluded from relying on these complaints and these three complaints should be excluded from the calculation of any fine or penalty.

upon the fact that those customers listed in Miko's customer base were validly acquired by Miko.

The above considered, it is clear that NCT attempted in good faith to follow and comply with the Commission's authorization procedures and that any shortcomings were unintentional and, at most, technical in nature.

2. NCT Complied with Credit Procedures

Another action the Commission must consider is whether the company complied with the relevant credit procedures. F.A.C. 25-4.118(13)(b)(2). In immediate response to the complaints referenced in the PAA, NCT has fully complied with all credit procedures. More specifically, NCT has issued credits totally over \$2,760 to the customers referenced in the PAA, notwithstanding obvious proof of authorization and including those customers properly transferred to NCT from WCSS and/or Miko. In many cases, the credit issued constituted a *full* refund, over and above the credit procedures required by the Commission's rules. NCT's actions and full cooperation in making the customers whole addresses the Commission's most immediate concern in this investigation, as relayed by Rick Moses in the May 6, 2004 conference call between Staff and NCT's counsel.

Moreover, by statute, the Commission has committed to implementing unauthorized switch rules that are consistent with the Telecommunications Act of 1996. *See* Section 364.003, Florida Statutes. The Federal Communications Commission's ("FCC") slamming liability rules under the Telecommunications Act of 1996 provide for resolution of slamming complaints by fully absolving the customer complainant of all assessed charges. *See, e.g., In the Matter of Comcast, Complaint Regarding*

Unauthorized Change of Subscriber's Telecommunications Carrier, FCC File No. 03-S85235, DA 04-831 (March 30, 2004).³ NCT has fully absolved the customer complainants referenced in the PAA. To the extent such action is sufficient under the Telecommunications Act as implemented by the FCC's and to the extent that the Commission's rules must, by statute, be consistent, NCT's absolution is sufficient to resolve these complaints without further fine or penalty.

3. NCT has Taken Prompt Action

The Commission must also consider whether NCT "took prompt action in response to the unauthorized change." F.A.C. 25-4.118(13)(b)(3). As Staff's records reflect, NCT promptly responded to all complaints of alleged unauthorized change, providing Staff with the necessary documentation and, as noted above, issuing credits to the complainants on a no-fault basis.

4. Other Mitigating Factors

In addition to those mitigating factors specifically included in F.A.C. 25-4.118(13)(b), the following facts also support mitigation of the fine proposed by Staff in the PAA:

- Since NCT began operations 1996, this is the first time the Commission has sought to initiate any enforcement action with respect to NCT's operations in Florida. The increase in the number of complaints since the

³ See also, *In the Matter of RSL Comm USA, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, FCC File No. 02-S79510, DA 04-845 (March 30, 2004); *In the Matter of Global Crossing Telecommunications, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, FCC File No. 03-S84218, DA 04-805 (March 30, 2004); and *In the Matter of PowerNet Global, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, FCC File No. 02-S80269, DA 04-850 (March 31, 2004).

company changed ownership in late 2002 is due to circumstances NCT considers non-culpable. NCT was sold because its previous owner was no longer willing to invest in the increased marketing required by today's competitive market conditions and dwindling margins. Unfortunately, increased telemarketing efforts increase the instances of errors being made by both customers, marketers and verification agents.⁴

- The percentage of apparent infractions committed by NCT, as compared to the total number of apparent slamming infractions in Florida since July 1999, is nominal. NCT's 42 alleged apparent infractions constitute less than 3.5% of the infractions attributable to the 9 companies mentioned in the PAA since July 1, 1999 and slightly under 1.2% of total apparent slamming infractions in Florida during that some time frame. Even then, only 9 complaints fail to be supported by any evidence of substantial compliance (those lacking any TPVs) and only one of the transferred Miko customers complained, but that complaint is not based on any actions by NCT. As to the other complaints, authorizations were obtained, but their verifications were found deficient based on their not having provided certain additional information that is not related to the customer's direct authorization decision. When viewed in context, the

⁴ The largest voluntary contribution offered in Settlement by NCT is for the nine complaints for which no TPV was provided. In making this offer, NCT is refraining from the argument that the lack of any TPV is not in the first instance its responsibility. By law, NCT and all carriers must use an independent party to verify. When that party fails to produce a verification, the carrier bears the responsibility, but is hardly the cause that a tape cannot be provided because the carrier not only does not make the tapes, but also by law is forbidden from doing so or from exercising direct control over their being made.

complaints against NCT are not based on deliberate or reckless behavior, but rather on inadvertent or technical oversights.

- Upon learning of the pending investigation, NCT, through legal counsel, immediately contacted Staff in order to resolve the investigation quickly and with minimal cost to both the company and the Commission.⁵ However, as acknowledged by Staff in its PAA, NCT was advised that Staff would be proceeding with its recommendation to the Commission. *See PAA at 10.*
- NCT intends to continue its operations in Florida and providing valuable services to Florida consumers in compliance with the Commission's rules. As set out more fully in the terms and conditions of its settlement proposal, NCT is prepared to take the steps necessary to achieve this.

Respectfully submitted,

Charles H. Helein
Loubna W. Haddad
The Helein Law Group LLP
8180 Greensboro Drive, Suite 700
McLean, Virginia 22102

Attorneys for New Century Telecom,
Inc.

⁵ The Commission docketed the present investigation against NCT on January 21, 2004. NCT's regulatory counsel made initial contact with Staff on February 5, 2004.

Terms of Settlement
In Docket No. 040062-TI
Compliance Investigation of
New Century Telecom, Inc.
Rule 25-4.118, F.A.C.

This Settlement is made and entered this ____ day of May, 2004 by an
between New Century Telecom, Inc., (the "Company") and the Florida Public
Service Commission (the "Commission"), represented by its Division of Competitive
Markets and Enforcement (the "Staff").

WHEREAS, on April 21, 2004 a Memorandum containing a Proposed
Agency Action (the "PAA") was issued to the Commission's Director, Division of
the Commission Clerk & Administrative Services by the Division of Competitive
Markets & Enforcement, Office of Standards Control & Reporting and Office of
General Counsel (collectively, the "Divisions") to be presented at a Regular Agenda
meeting of the Commission;

WHEREAS, the PAA proposed that the Company be penalized for 42
apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local
Toll, or Toll Provider Selection;

WHEREAS, thereafter, the Company's representatives and the Staff engaged
in discussions and exchanged certain information relevant to the PAA;

WHEREAS, as a result of those discussions and information, the Company
sought to resolve the issues raised by the PAA through settlement and the Staff
indicated its willingness to consider the Company's settlement offer provided that
the terms of the settlement be submitted prior to May 18, 2004 and that such terms
satisfy the material issues of the PAA; and

WHEREAS, this Settlement contains the terms to satisfy the material issues of the PAA;

NOW THEREFORE, the Company and the Staff on behalf of the Commission do hereby agree as follows:

1. The Parties agree and acknowledge that this Settlement is in consideration for the termination of Docket No. 040062-TI and shall constitute final action taken by the Parties concerning the Proposed Agency Action in Docket No. 040062-TI ("PAA").

2. The Parties agree that this Settlement is for settlement purposes only and that signing does not constitute an admission by the Company, or its principals, of any violation of law, rules or policy associated with or arising from its actions or omissions as described in the PAA.

3. The Staff agrees that, in the absence of material new evidence relating to issues described in the PAA that the Staff did not obtain through its investigation for the PAA or is not otherwise currently in the Commission's possession, the Staff will not use the facts developed for the PAA, or the existence of this Settlement, to institute, on its own motion, any new proceedings, formal or informal, or to make any actions on its own motion against the Company, or its principals, concerning the matters that were the subject of the PAA. Consistent with the foregoing, nothing in this Settlement limits, *inter alia*, the Commission's authority to consider and adjudicate any formal complaints that may be filed by third parties pursuant to the F.A.C., as amended, and to take any action in response to such complaints.

4. For purposes of settling the matters set forth herein, the Company agrees to take the actions described below.

- (i) Copies of Consent Decree to Prospective Successors or Assigns: Prior to any sale, dissolution, reorganization, assignment, merger, acquisition or other action that would result in a successor or assign for provision of the Company's intrastate communications services, the Company will furnish a copy of this Settlement to such prospective successors or assigns and advise same of their duties and obligations under this Settlement.
- (ii) Notice of Consent Decree Requirements to Officers, Directors, Managers, and Employees: The Company will be responsible for making the substantive requirements and procedures set forth in this Settlement known to its directors and officers, and to managers, employees, agents, and persons associated with the Company who are responsible for implementing the obligations set forth in this Settlement.
- (iii) Provisioning and Verification Code of Conduct: The Company will establish a Compliance Program that will conform to this Settlement and be reviewed by all current provisioning personnel and verification agents. All such persons will reaffirm annually, in writing that they have recently reviewed, and fully understand, the Compliance Program. The Compliance Program will establish a strict quality standard, to which all persons will be required to adhere.
- (iv) Compliance Infractions: The Company shall keep records listing material infractions, if any and all personnel and agents shall be informed that a material violation of the Compliance Program will result in immediate termination of employment.
- (v) Complaints: As of the Effective Date, and going forward, the Company will promptly and in good faith address and resolve all complaints regarding its services in a reasonable manner consistent with this Settlement and the Compliance Program. In all cases where the Company concludes that a decision to switch to the Company was not properly verified, the Company will take appropriate disciplinary action against the employee or agent in question, consistent with the standards set forth in the Compliance Program. In all cases where the Company concludes that proper verification was not obtained the Company will contact the Customer and provide appropriate remedies.

- (vi) Reporting: Within 60 days from the Effective Date, the Company will provide a formal report to the Staff. The Company will provide additional reports every twelve (12) months, continuing for twenty-six (26) months from the Effective Date. Each report will include the following: (a) a status report on the Company's progress in implementing this Settlement, (b) a list of all infractions assigned to personnel related to this Settlement during that period, and (c) copies of all Customer complaints related to the Company's compliance with this Settlement for the period since the previous report, including copies of the resolution of any such complaint.
- (vii) Verification Script: Company will use the script attached hereto for third party verification based on the fact that to the best of Company's knowledge it complies with the Commission's requirements and sets forth a clear and conspicuous verification. Within 60 days from the Effective Date, Company's representatives and the Staff shall work together to modify the attached script if need be.
- (viii) Should the Company wish to make any changes to this Settlement during the period beginning on the Effective Date and continuing twenty-six (26) months from the Effective Date, it must submit the proposed change in writing to the Staff no later than 30 days before the proposed adoption of the change. Within 30 days of receipt of any proposed change to the Settlement, the Staff shall advise the Company whether it objects to the proposed change. Within 10 days of receiving any objection from the Staff, the Company shall be permitted to present for the Staff's consideration further justification for the proposal. Should the Staff fail to object expressly to the proposed change within the 30-day time period, the Company shall be free to implement it. If the Staff should object expressly to the proposed change within the 30-day time period, the Company shall not implement it.

5. The Company will make a voluntary contribution (not a fine or penalty) to the Florida Public Service Commission in the amount of \$151,500.00 as follows: \$9,000 for 9 cases in which no TPV was available (\$81,000); \$2,500 for 27 cases in which the verification lacked the notification required by the Rule (\$67,500); and \$500 for the 6 cases in which the TPV was for Miko Telephone Corporation (\$3,000), a total of \$151,500.

6. Company shall pay \$15,150 within ten days of the Effective Date of this Settlement. Fourteen days thereafter, Company shall pay each week \$5,000 until the balance \$136,350 is retired in full, a period of 27 weeks, with a final payment of \$1,350 in the 28th week. Staff acknowledges that this payment plan is based on the financial position of the Company at the time of Settlement. Company acknowledges that should its financial position improve at any time during the payment period it will increase or accelerate its weekly payments accordingly.

7. In addition, Company shall refund or credit the full amount of any charges incurred by each of the 42 customers to the extent not already credited or refunded.

8. The Company must make its payments by check, wire transfer or money order drawn to the order of the Florida Public Service Commission, and the check, wire transfer or money order should refer to Acct. No. _____. If the Company makes payments by check or money order, it must mail the check or money order to: _____.

If the Company makes payments by wire transfer, it must wire such payment in accordance with Commission procedures for wire transfers.

9. In express reliance on the covenants and representations contained herein, the Staff agrees to terminate this PAA and resolve all issues. In addition, should Staff proceed against any other company listed for investigation in Docket Nos. 020645-TI, 031031-TI or 040289-TI in the PAA ("Other Respondents"), Company shall not be required to participate in any fashion nor provide any materials of any kind in connection therewith, nor shall Company be named or

referred to by name in any documents produced by the Commission in connection with such investigations, it being understood and agreed that this Settlement is a full and complete release of Company of any and all liability and obligations of any kind arising from or in connection with the 42 complaints and any other matter addressed in the PAA.

10. The Company admits that it operates as a reseller of intrastate telecommunications services and that the FPSC has jurisdiction over it and the subject matter for the purposes of this Settlement. The Company represents and warrants that it is the properly named party to this Settlement and has sufficient funds available to meet fully all financial and other obligations set forth herein. The Company further represents and warrants that it has caused this Settlement to be executed by its authorized representative's signature. Said representative and the Company respectively affirm and warrant that said representative is acting in her capacity and within her authority as a corporate officer of the Company, and on behalf of the Company and that by her signature said representative is binding the Company to the terms and conditions of this Settlement. The Company and its principal also represent that they have been represented by counsel of their choice in connection with this Settlement and are fully satisfied with the representation of counsel.

11. The Company represents and warrants that it shall not effect any change in its form of doing business or its organizational identity or participate directly or indirectly in any activity to form a separate entity or corporation which

engages in acts prohibited in this Settlement or for any other purpose which would otherwise circumvent any part of this Settlement or the obligation of this Settlement.

12. The Company's and the Staff's decision to enter into this Settlement is expressly contingent upon this Settlement being signed without revision, change, addition, or modification.

13. The Parties agree that either the Staff or the Company may withdraw from this Settlement if any revision, change, addition, or modification is made to its terms.

14. The Parties agree that this Settlement shall become part of the Commission's record but shall be kept from disclosure to the public.

15. If the Commission brings a judicial action to enforce the terms of this Settlement, the parties will not contest the validity of the Settlement, and the Company will waive any statutory right to a trial *de novo*. The Company does not waive any statutory right to a trial *de novo* to determine whether it violated this Settlement.

16. In the event that this Settlement is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

17. Any material violation of the Settlement will entitle the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order. The Commission agrees that before it takes any formal action in connection with any alleged or suspected violation of this Settlement, the Company will be

notified of the alleged or suspected violation and be given a reasonable opportunity to respond.

18. The Parties agree that if any provision of the Settlement conflicts with any subsequent rule or order adopted by the Commission, where compliance with the provision would result in a violation, (except an order specifically intended to revise the terms of this Settlement to which the Company and its principals do not consent) that provision will be superseded by such Commission rule or order.

19. By this Settlement, the Company does not waive or alter its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information. The status of materials prepared for, reviews made and discussions held in the preparation for and implementation of the Company's compliance efforts under the Settlement, which would otherwise be privileged or confidential, are not altered by the execution or implementation of its terms and no waiver of such privileges is made by this Settlement.

20. The Parties agree that, within five (5) business days after the date of this Settlement the record shall be closed and sealed. The Parties will take such other actions as may be necessary to effectuate the objectives of this Settlement.

21. This Settlement may be signed in counterparts.

Staff
Florida Public Service Commission

For New Century Telecom, Inc.

Karyn Bartell
President

Date

Date

Proposed NCT Florida Verification Script

BEGIN RECORDING.

Hello Mr./Mrs. _____, my name is _____ with [name of verification company].

I am verifying that you are changing and are authorized to change your local toll and state-to-state long distance service to New Century Telecom, Inc.

Please note that this call is being recording.

Do you understand that New Century Telecom is an independent company that is not affiliated with your local phone provider? Please state **YES** or **NO** at the tone.

Please verify that your phone number is (###) ###-#### by saying **YES** or **No** at the tone.

Please verify that the billing name for this number is _____ by saying **YES** or **NO** at the tone.

Please verify your billing address: _____

Are you the individual authorized to request a change in service for this telephone number? Please state **YES** or **NO** at the tone.

Are you over 18 years of age? Please state **YES** or **NO** at the tone.

Please confirm that you are choosing New Century Telecom as your local toll long distance provider for this telephone number by saying **Yes** or **No** at the tone.

Please confirm that you are choosing New Century Telecom as your state-to-state long distance provider for this telephone number by saying **Yes** or **No** at the tone.

Please note that there may be only one local, one local toll and one toll provider for each telephone number. Your local toll and state-to-state long distance service will only be changed for the telephone number you have just confirmed.

For verification purposes, please state the month and date of your birth: ___/____.

Your local phone company may charge you a switching fee billed as a PIC charge. If so, please contact New Century Telecom for reimbursement.

Should you have any additional questions, please contact New Century Telecom at 1-###-###-####.

STOP RECORDING.