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July 16, 2004

**VIA OVERNIGHT MAIL**

Blanca S. Bayo, Director  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee FL 32399-0850

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

Dear Ms. Bayo:

On behalf of New Century Telecom, Inc., enclosed please find the company's  
Further Objection and Responses to the Commission's July 6, 2004 Subpoena Duces  
Tecum Without Deposition in the above-referenced docket.

An extra copy of this filing is enclosed. Please return this copy to the undersigned  
in the provided postage-prepaid envelope.

Respectfully,

Loubna W. Haddad  
Regulatory Counsel

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FPSC-BUREAU OF RECORDS

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Docket No. 040062-TI-Compliance )  
Investigation of New Century Telecom, Inc. for )  
Apparent violation of Rule 25-4.111, F.A.C., )  
Local, Local Toll, or Toll Provider Selection. )

4

FURTHER OBJECTIONS AND RESPONSE TO  
SUBPOENA DUCES TECUM WITHOUT DEPOSITION

COMES NOW New Century Telecom, Inc. ("NCT"), by and through undersigned counsel, and files this Further Objection and Response to the Florida Public Service Commission's ("Commission") July 6, 2004 Subpoena Duces Tecum Without Deposition ("Subpoena").

BACKGROUND

On or around 3:30 p.m. on Friday, July 9, 2004, The Helein Law Group, LLP, as counsel to NCT, was served with a Subpoena issued by the Commission on July 6, 2004. The Subpoena required NCT to produce at the Commission's offices on or before Monday, July 12, 2004 to following:

All documentation, information, electronic files, emails, intracompany correspondence, notes, memos, letters, or other means of written communication that mentions, describes, lists, or otherwise denotes any complaint or contact from Florida consumers regarding service, slamming, cramming, or billing problems with New Century Telecom, Inc. since January 1, 2003, until June 30, 2004.

On that same day, NCT filed a written objection to the Subpoena on the grounds that the timeframe allotted for complying was fundamentally unreasonable, burdensome and impossible to satisfy. The July 9<sup>th</sup> objections reserved NCT's right to file additional objections on other grounds available to NCT.

### PRELIMINARY STATEMENT

The following response is based upon the facts and information presently known and made available to NCT. Discovery, investigation, research and analysis are still ongoing, and may possibly lead to additions, variations and changes to this response. Without obligating itself to do so, NCT reserves the right to change or supplement this response as may be necessary. This Preliminary Statement is incorporated into the responses set forth below.

### GENERAL OBJECTIONS TO SUBPOENA

(1) NCT objects to the Subpoena in general on the ground that it was not filed in conformity with the Florida Rules of Civil Procedure (“Procedural Rules”). Rule 1.351 of the Procedural Rules governs the production of documents without deposition. Paragraph (b) specifically states that a party seeking production under Rule 1.351 “shall give notice to every other party of the intent to serve a subpoena under this rule at least 10 days before the subpoena is issued . . . . If any party serves an objection to production under this rule within 10 days of service of the notice or the person upon whom the subpoena is to be served documents or things, the documents or things shall not be produced under this rule.” Rule 1.351(b). The Commission failed to give NCT, an obvious party to this investigation, the requisite notice of the Subpoena, depriving NCT of its right to object to the Subpoena and, by operation of the rule, prevent production. NCT reserves its right to move to quash the Subpoena as improper and/or seek a protective order in the event settlement negotiations in this docket fall through and formal proceedings, including discovery, are escalated.

(2) NCT objects to the Subpoena in general on the ground that it does not provide for a reasonable time for production and is unduly burdensome. As noted above, the Subpoena was served on NCT on July 9<sup>th</sup> and sought production on or before July 12<sup>th</sup>. Because the Commission failed to serve proper notice of the Subpoena on NCT under Rule 1.351(b), NCT was unable to object to the timeframe allotted for production. Now Staff, knowing that the Commission has granted NCT and Staff until July 29<sup>th</sup> to negotiate a settlement in this docket, has indicated that it will not proceed with further settlement discussions until the documents requested in the Subpoena are produced. Staff's position forces NCT to attempt to sort through 1 ½ years' worth of documents on an expedited basis in order to salvage the settlement process and to go through the expense of a significant document production that may be rendered meaningless should a settlement be reached.

#### SPECIFIC OBJECTIONS TO REQUESTED DOCUMENTS

(1) NCT objects to the document request to the extent it seeks documents protected by the Attorney-Client Privilege and/or the Attorney Work Product Doctrine or are otherwise privileged or protected from disclosure. In the event that any privileged matter is disclosed by NCT in connection with this response, such disclosure is inadvertent and shall not constitute waiver of any privilege.

(2) NCT objects to the document request to the extent it seeks confidential and proprietary business information or information that reflects trade secrets.

(3) NCT objects to the document request to the extent it is overbroad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of material relevant to the subject matter of this investigation. See Rule

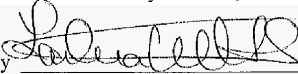
1.280(b), Procedural Rules. More specifically, documents and information regarding complaints by Florida consumers about service, cramming or billing problems is irrelevant to the question of whether NCT apparently violated Rule 25-4.118, F.A.C. relating to the selection of toll providers.

(4) NCT objects to the document request to the extent it calls for production of public documents that are otherwise available to Staff and the Commission.

**RESPONSE**

Subject to the foregoing objections and without waiving same, copies of all responsive, non-privileged documents, to the extent they exist, are being produced on this day under separate cover of letter to Lee Fordham, attorney for the Florida Public Service Commission, at 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399-0850.

Respectfully submitted,  
New Century Telecom, Inc.

By   
The Helein Law Group LLP  
Its Counsel  
8180 Greensboro Drive, Suite 700  
McLean, Virginia 22102

cc: Of Counsel:  
Deeno Kitchen  
Dobson, Kitchen & Smith  
610 N. Duval Street  
Tallahassee, Florida 32301