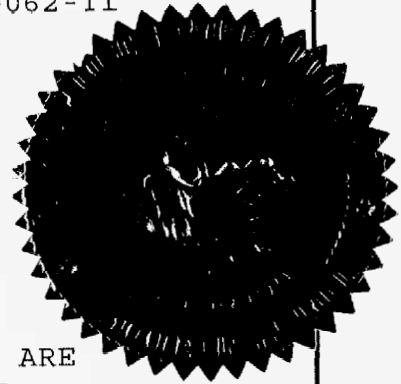


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040062-TI

In the Matter of

COMPLIANCE INVESTIGATION OF NEW
CENTURY TELECOM, INC. FOR APPARENT
VIOLATION OF RULE 25-4.118, F.A.C., LOCAL,
LOCAL TOLL, OR TOLL PROVIDER SELECTION.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 11

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON

DATE: Tuesday, October 5, 2004

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

1 PARTICIPATING:

2 DEENO KITCHEN, ESQUIRE, Dobson, Kitchen & Smith,
3 representing New Century Telecom, Inc.

4 CHARLES J. BECK, ESQUIRE, representing the Office of
5 Public Counsel

6 LEE FORDHAM, ESQUIRE, BETH SALAK, DALE BUYS, and RAY
7 KENNEDY, representing the Florida Public Service Commission
8 Staff.

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P R O C E E D I N G S

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2 CHAIRMAN BAEZ: We will call the agenda back to
3 order.

4 And, Commissioners, I had misspoken. We are now on
5 Item 11.

6 MR. BUYS: Commissioners, Item 11 is staff's
7 recommendation in Docket 040062-TI for the Commission to reject
8 New Century Telecom's settlement offer to resolve 42 apparent
9 violations of Rule 25-4.118, also referred to as slamming, and
10 instead penalize the company in the amount of \$420,000 for
11 those apparent violations. Representatives for the company and
12 the Office of Public Counsel are present to address the
13 Commission on this item, and staff is available to answer
14 questions the Commissioners may have.

15 CHAIRMAN BAEZ: Thank you.

16 Mr. Beck, we can start with you, I think.

17 MR. BECK: Thank you, Chairman Baez. My name is
18 Charlie Beck with the Office of Public Counsel. I'm here
19 simply to support the staff recommendation and answer any
20 questions you may have.

21 CHAIRMAN BAEZ: Thank you. Sir.

22 MR. KITCHEN: I'm Deeno Kitchen. I'm here in
23 Tallahassee with my co-counsel, Robert Trammell, from here on
24 behalf of New Century Telecom. What we want to address you
25 about today is very simply we are here to not let a lot of hard

1 work and a lot of progress in negotiating with the staff go for
2 naught. We say that because we recognize, as we sit here,
3 there are only really three viable alternatives. Number one,
4 we are sanctioned and not able to do work in the state. Number
5 two, we go to an administrative hearing. Or, number three, we
6 still try to work here and stay in this state and do well.

7 Let me tell you why a lot of hard work and progress
8 would go for naught. When we were here back in late June, I
9 believe, it was clear that we had a situation that we wanted to
10 negotiate and we were told that negotiation would do no good.
11 But we did negotiate, and we negotiated hard, and we made a
12 tremendous amount of progress that seems to just be not
13 mentioned. And if I could, let me just tell you some things
14 that we have agreed on that could help us stay here and try to
15 do the work that we want to do as a good corporate citizen in
16 the right way.

17 We have agreed to make a voluntary contribution of
18 \$151,500 over time. And as I understand it, and we understand
19 it, the staff has accepted these things. There are four areas
20 where there is not a connect, and hopefully we can reduce those
21 to two today.

22 Secondly, that we refund or credit the full amount of
23 any charges incurred in the 42 customers that we haven't
24 already done. We believe we have already done it. That we
25 establish a telemarketing compliance program included in our

1 settlement proposal on a going-forward basis that our company
2 will properly and in good faith address and resolve all
3 complaints regarding its services in a reasonable manner
4 consistent with its settlement and its compliance program.
5 That within 60 days from the effective date of our settlement
6 that the company will provide a formal report of additional
7 reports every 12 months continuing for 26 months from the
8 effective date.

9 These reports will include for staff and for you to
10 know about the status of the company's progress in implementing
11 the settlement, a list of all infractions assigned to personnel
12 related to its settlement, copies of all customer complaints
13 related to the customers compliance with the settlement for a
14 period since the previous report, including copies of the
15 resolutions of any such complaints.

16 Use third-party verification scripts included in the
17 settlement, and implement any changes necessary to comply with
18 the Commission's rule, if needed, within 60 days from the
19 effective date. Within 30 days from the effective date to
20 discontinue using Teco Verifications, Inc. as a third-party
21 verification company, and require the new third-party
22 verification company to use a verification script in its
23 settlement. And require the third-party verification company
24 to include the date of the verification and recording, and to
25 work with the Commission staff to establish a warm transfer

1 line between the Commission and the company's customer service
2 department which will be operational within 120 days of the
3 effective date.

4 Those things we can agree on. Here is the four
5 things that coming in today that we weren't able to agree on.
6 One, was the staff's request that we cease using prerecorded
7 questions with a simple response of yes or no in the
8 third-party verifications. This revised script follows some of
9 the same formats, with the exception of the statements required
10 by the Commission slamming rules.

11 We had a request that the telemarketing calls to
12 Florida consumers be recorded. We had a request that we cease
13 using the current third-party verification company we are using
14 because of what the staff saw as a conflict for someone with
15 that company. And lastly, that we post a one-million dollar
16 surety bond against violations of these things.

17 I'm authorized today to say, Mr. Chairman, and
18 members of the Commission, that New Century is willing to
19 record the third-party verifications and to have them taped so
20 that they can be reviewed. We are also willing today -- that
21 is one of the four things. We are also willing to not use
22 InfoCorp., that is that third-party verification company that
23 there was an objection to, to not use them.

24 There is only two things that we now can't meet, and
25 I suggest to you they are two things we cannot do. We are in

1 the posture of doing everything that we possibly can do to stay
2 here. The things that we can't do are these two. Number one,
3 we can't post the million dollar bond. In all due respect, we
4 couldn't post a \$20,000 bond. Posting bonds is a unique thing.
5 A bond should not be required here. You have all the control
6 over us in the world. If we don't do what we said we would do
7 in the settlement agreement, there are built-in checks on us.
8 We can't do that. It would be a windfall for the state if
9 there was a bond such as that. It doesn't go to the customers.

10 The FCC handles slamming basically with making the
11 customer whole, denying the client to the slamming company and
12 there by minimizing the amount of enforcement costs to the
13 agencies enforcing it. These are things -- the fourth one that
14 we can't do, which leaves really two of them that we can't do,
15 is we cannot record and tape the solicitation calls. And there
16 are some very practical reasons for that. We couldn't get
17 telemarketers to do it. Keeping in mind in the state of
18 Florida any taped call must be consented to by both parties and
19 it is a crime not to. Number one, we all know a call to a home
20 to say this is a telemarketer is tough enough, but when you
21 say, and by the way, because we are not sure we can believe
22 what you say, we are fixing to tape it. And that, number one,
23 the independent agents that are telemarketers wouldn't get near
24 that. We can't do it. It is impractical, it wouldn't work.

25 So what I have said is we have come here with where

1 there were four, there is now two. And the only two that we
2 can't do are those we just flat can't do. What this company
3 wants to do is to be a good corporate citizen. When we came
4 here we were told in the first hearing here that all we wanted
5 to do, we were going to get caught slamming and leave the
6 state. You heard that. That is not so. Our client has sent
7 us here, invested here to try to convince our state commission
8 and our staff to give us a chance under these strictures that
9 we agree to, to do the job right and in a way that everyone
will be satisfied with. That is what we ask for. We ask for
no more.

We have come so close to getting together. We know
that a \$442,000 fine, there is no way this company can pay
that. So what are you left with? Lawyers and administrative
hearings and spending more money trying to get the chance to
work here, or leaving. That would be a self-fulfilling
prophecy if the fine itself made it impossible for us to work
here.

We have truly done all that we know how to do to
reason together so that we can get a chance to work under
strictures with the eye of the staff and the eye of this
Commission on us. If we don't do better, if we don't do better
that can be dealt with.

CHAIRMAN BAEZ: Thank you, Mr. Kitchen.

Commissioners, questions?

1 COMMISSIONER BRADLEY: I have heard what the
2 gentleman said, and let me ask you this question, then. You
3 have proposed that the company pay \$151,000, \$151,500 in
4 installments over the next six months in lieu of what staff has
5 suggested, a fine of \$420,000, which comes to \$1,000 per
6 violation.

7 MR. KITCHEN: That's correct.

8 COMMISSIONER BRADLEY: Staff also has a concern about
9 the company that you use for your third-party verification, and
10 staff has stated that this is an affiliate company.

11 MR. KITCHEN: That's correct.

12 COMMISSIONER BRADLEY: Which is a violation of our
13 rules. And staff also has an issue with the questions being
14 answered in a yes or no fashion. And I guess this question, I
15 mean, this issue has come about as a result of customer
16 complaints.

17 I'll tell you what, I would like to put something out
18 there, Mr. Chairman.

19 MR. KITCHEN: Commissioner Bradley, may I make
20 something I probably didn't make clear.

21 COMMISSIONER BRADLEY: Uh-huh.

22 MR. KITCHEN: The third-party verification company
23 that the staff has a problem with, we are agreeing to not use
24 them. We accept that and agree not to use them. And I wanted
25 to make clear that that is -- just as we said on the

1 verifications, on the third-party verifications where we
2 originally could not agree to tape those, we are agreeing to
3 tape those.

4 COMMISSIONER BRADLEY: What about the issue of the
5 yes or no questions?

6 MR. KITCHEN: That should be taken care of by the
7 script that will be used on anything that is recorded will be
8 okayed as part of the agreement. I mean, that will have to be
9 okay. As far as third-party verifications, it's going to be a
10 taped conversation that will be heard between the solicited
11 customer and the solicitor.

12 CHAIRMAN BAEZ: Commissioner Bradley, if you are
13 gearing up to throw out a motion, I have a couple of questions.
14 And I think, staff, I'm assuming you have heard some statements
15 by Mr. Kitchen that you may not have heard before, and I was
16 just curious as to what you thought about them and if we could
17 get some reaction or response.

18 MR. KENNEDY: We have heard two new -- basically, two
19 new items on the table here. The TPV recordings, as I
20 understand it, it will be a live recording of the customer and
21 the verifier.

22 MR. KITCHEN: That's my understanding.

23 MR. KENNEDY: Okay. And they have offered to change
24 the TPV company. Of course, the next question is who is that
25 going to be? Do we know that yet?

1 MR. KITCHEN: I have no idea who it's going to be.
2 It was going to not be the one that you all objected to.

3 CHAIRMAN BAEZ: Well, but --

4 COMMISSIONER BRADLEY: And it can't be an affiliated
5 company.

6 CHAIRMAN BAEZ: Right. Following up, Mr. Kitchen,
7 you realize that is probably not enough. I mean, that still
8 remains. The grounds for which staff may have had some
9 concerns over the TPV may still exist. So to the extent
10 that -- I guess I'm hearing you say that the grounds is not
11 going to an issue anymore.

12 MR. KITCHEN: If that is an issue, then that will not
13 be part of what I'm offering today. I'm assuming this will
14 would not be an issue, whatever the company is would be one
15 that they have not got that complaint with.

16 CHAIRMAN BAEZ: Mr. Kennedy.

17 MR. KENNEDY: And the surety bond issue, we are very
18 sensitive about that because of the prior actions of maybe
19 related companies. I hate to go there, but we don't want them
20 to just walk out of the state, you know, halfway through a
21 payment cycle or something. Of course, I guess they could do
22 that, but we are concerned about that issue. If they could
23 have offered something in the surety bond, we certainly were
24 willing to listen. So that is still kind of an issue at this
25 point.

1 CHAIRMAN BAEZ: All right. So we are between a
2 million and 20,000, is that what you said earlier? I mean,
3 this is not the first time. I mean, I seem to recall that the
4 discussion that we had previously had much more history to it.
5 And I think if I'm listening to staff correctly, and I dare say
6 I think the Commission as a whole had some concern over this.
7 And, you know, from there stems the --

8 MR. KITCHEN: From our standpoint, Mr. Chairman, I
9 think we have made it very clear we are trying to not be bound
10 by those concerns. Give us a chance. If it's a financial
11 thing that keeps us from doing it, then there is no way we can
12 do it. We feel you can watch us, you can make it us do it
13 right, you can stop us if we are doing it wrong. Give us a
14 chance. That history shouldn't apply to what we are seeing now
15 in New Century Telecom. We have come forward and we haven't
16 run. We have offered to pay for our mistakes. We have offered
17 to try to do better from here forward. That is what, in part,
18 the call was when we left here, to try after that last meeting
19 to get things right instead of just talking about punishment.
20 Punishment can remove you. If it is financial enough, we can't
21 do it.

22 CHAIRMAN BAEZ: Ms. Salak.

23 MS. SALAK: I was just going to make some
24 observations that obviously what they say today is a good
25 thing. I mean, those are very positive moves. I would offer

1 you two alternatives. We would like to explore those. First,
2 you could go ahead and vote on the recommendation, and we will
3 continue to negotiate well prior to any of us going to hearing.
4 I mean, that will be our mode, and we can continue to look at
5 that and perhaps come back to agenda with a full settlement
6 where we have worked out some of the details about who the
7 third-party verifier will be, whether we can work out something
8 on the surety bond.

9 The other alternative is without those details it is
10 really hard to recommend that we should approve them or not,
11 just sitting here today and having heard that they will agree.
12 So we could defer it until next time, although that would be my
13 second alternative. I would rather get this done.

14 CHAIRMAN BAEZ: I'm glad to here that that was a
15 second alternative. I did have some another question, but I
16 cut Commissioner Bradley off, so please --

17 COMMISSIONER BRADLEY: Go ahead.

18 CHAIRMAN BAEZ: Since the tenor of this has been
19 going down the list of staff's concerns, certainly in the
20 recommendation and trying to address them, Mr. Kitchen, I do
21 see that there are -- you enumerated four, and the two
22 remaining curiously are what I would call discovery or
23 providing of information problems. Are those still -- I guess
24 I would ask staff, are those still out there? I think if not
25 in practice but in spirit, those kind of issues have to get

1 resolved. And I notice that one of them involves OPC, as well.
2 And I would be curious to hear what Mr. Beck's thoughts are of
3 that. But what I'm trying to impart to you is that there is a
4 general -- I do appreciate, certainly appreciate the company's
5 efforts to move closer to an ideal resolution to all of this.
6 But there is this vibe of noncompliance in all directions that
7 I think needs to be -- there is an attitude there that needs to
8 be corrected, as well. And it doesn't help that correction or
9 that effort to have requests for information that are, you
10 know, summarily objected to or just not complied with. I mean,
11 if you are going to --

12 MR. KITCHEN: That is a fair question.

13 CHAIRMAN BAEZ: If Century is going to come into the
14 fold, it has to come into the fold fully.

15 MR. KITCHEN: May I respond to that, sir?

16 CHAIRMAN BAEZ: By all means.

17 MR. KITCHEN: Mr. Chairman, the only reason we have
18 tried to -- it takes a lot of time and money to put together
19 some of these responses. We have tried to -- if we can get
20 together and agree, a lot of this is going to go away. That is
21 why we are trying to reach agreement without spending -- there
22 is limited resources. **The more we do spend doing lawyer work**
23 **over here and over here takes away from what -- we believe if**
24 **an agreement is reached, the rest won't be a problem.**

25 CHAIRMAN BAEZ: And I recognize that. But what I'm

1 trying to -- the point that I'm trying to make is that, and I
2 am going to go out on a limb and say that this is the absolute
3 truth, is that the Commission or the Commission staff doesn't
4 engage in gratuitous requests for information, although it may
5 feel like that sometimes. But that is not the practice of this
6 Commission or the Commission staff. And if it was requested
7 and it was out there, it was for a good reason.

8 Now, I recognize and I appreciate the fact that if
9 you all can come to some kind of agreement on compliance in
10 terms of a settlement offer, that, yes, all of those requests
11 for information go away as a matter of practice. All of that
12 is true, but I am looking to you for your client's assurances
13 that that kind of attitude is not going to prevail as to your
14 relationship with this Commission any longer, because that
15 doesn't reflect very well. You can throw \$150,000 at it, but
16 if you are going to be flouting the requests of this
17 Commission, which I repeat to you, again, are made in good
18 conscience, then we still have an attitude problem that doesn't
19 get us anywhere.

20 MR. KITCHEN: Mr. Chairman, that is well taken. May
21 I ask a question?

22 CHAIRMAN BAEZ: By all means.

23 MR. KITCHEN: I hate to do this on statewide
24 television and say I don't know the answer to it. I know we
25 have had requests for production from the Office of the Public

1 Counsel, and -- are there any from the staff that we haven't
2 responded to?

3 MR. KENNEDY: We asked for the complaints that were
4 filed directly with the company, a list of all of those. Those
5 are critical in actually being willing to accept a settlement
6 offer. You know, if there are 10,000 out there that we are not
7 aware of in the state of Florida, you know, that is a bigger
8 problem than we may have thought it was.

9 CHAIRMAN BAEZ: And, again, Mr. Kitchen, I appreciate
10 your assessment that if there is a settlement -- we don't want
11 to get involved in unnecessary lawyering. But I think you just
12 heard Mr. Kennedy say as to what part of the equation those
13 requests or that information plays in all of this. So if it is
14 in your true interest to reach a resolution that will allow
15 your company to provide service in compliance with our rules,
16 then I think we have to start complying with things like
17 requests for information, and so on.

18 And I profess complete lack of knowledge as to why
19 OPC may have asked for information, too, but I believe, you
20 know, they deserve some deference. Their requests deserve some
21 reverence, as well. And I don't know to what extent that
22 request is outstanding. I don't know to what extent that
23 request plays in this consideration of a settlement
24 possibility, but I think we need to get that at least
25 straightened out in principle, if not in practice at this

1 moment for my money.

2 MR. KITCHEN: Mr. Chairman, members of the
3 Commission, I can assure you that this trial lawyer will make
4 every effort to get that stuff here. And if I can't do it,
5 then you ought to do what you have to do. But that is what we
6 will certainly try to do.

7 CHAIRMAN BAEZ: Fair enough.

8 MR. KITCHEN: We want to stay here. I think we
9 should have shown you that is what we really want to do, and we
10 want to do what is necessary to stay here, if we can.

11 CHAIRMAN BAEZ: Commissioners, I'm through saying
12 what I had to say and ask, if you all have any other questions
13 or a motion.

14 COMMISSIONER DEASON: I have just a few questions.
15 First of all, I'm trying to understand what is the purpose of
16 the surety bond? I mean, why is it that, staff, this is one of
17 the requirements that you have seen fit to include?

18 MR. KENNEDY: Our concern would be without it --
19 let's assume we accept -- you know, accept the settlement, that
20 we are not totally convinced that they will be here a month
21 from now.

22 COMMISSIONER DEASON: You are not convinced that they
23 will actually pay?

24 MR. KENNEDY: That's correct.

25 COMMISSIONER DEASON: But what I'm trying to

1 understand is the practical effect of everything that is going
2 on here. What I have heard the company represent is that they
3 cannot come up with that level of a surety bond. And if that
4 is a requirement, they are going to be forced to leave the
5 state. So you are going to get what you want one way or the
6 other. I mean, you are saying that if -- are you trying to
7 force this company out of the state by putting a one million
8 dollar surety bond on them?

9 MR. KENNEDY: No. To be perfectly frank, I would
10 assume they would have come back and said we can't afford a
11 million, but we might could afford 50,000. That is what we
12 expected and that didn't happen, which has surprised us
13 somewhat.

14 COMMISSIONER DEASON: So the question is whether they
15 are going to pay what they said they were going to pay, is that
16 correct?

17 MR. KENNEDY: Correct.

18 COMMISSIONER DEASON: When you say you need a surety
19 bond to guarantee New Century's compliance with its settlement
20 agreement, you mean that they are going to comply with making
21 the payments when they say they are going to make them?

22 MR. KENNEDY: Exactly. And it represents a
23 commitment.

24 COMMISSIONER DEASON: Has staff looked at this
25 company's financial records to show as to whether they are

1 capable of taking this on as a corporate undertaking, that they
2 will meet the commitments of paying this money when they say
3 they will pay it?

4 MR. KENNEDY: I have not. Maybe Mr. Buys has.

5 MR. BUYS: No. It is a private company, I don't
6 believe those financial records are available.

7 COMMISSIONER DEASON: Did you ask for them?

8 MR. BUYS: No.

9 CHAIRMAN BAEZ: Not to interrupt, Commissioner
10 Deason, I think if we had trouble getting complaint information
11 before today, I think getting financial information may have
12 been somewhat more difficult. But I think it is a good point
13 that staff should perhaps pursue that.

14 MR. KITCHEN: May I respond, Mr. Chairman?

15 CHAIRMAN BAEZ: I'm sorry?

16 MR. KITCHEN: May I address that?

17 CHAIRMAN BAEZ: Well, Commissioner Deason has --

18 COMMISSIONER DEASON: I have no problem.

19 MR. KITCHEN: I'm sorry to interrupt.

20 CHAIRMAN BAEZ: Go ahead, Mr. Kitchen.

21 MR. KITCHEN: The simple fact in dealing with the
22 surety bond, the reason we have had to structure the 151,000
23 over time is because of our financial condition. To post any
24 kind of performance bond like that the bond company would
25 require you to put the money up and then pay the premium. If

1 we could do that, we could go on and give it to the state. We
2 are on the hook in this any way we do it. If we don't pay, we
3 are going to be gone. I mean, all we can do is what we can do
4 financially, and we couldn't make, as far as a bonding company,
5 a \$20,000 bond in the state of Tennessee I am told. Bonding
6 companies don't put up bonds for people.

7 COMMISSIONER DEASON: And the other question I have
8 pertains to the outstanding discovery matters. And, Mr.
9 Chairman, I was unclear as to whether there was a commitment on
10 the company to respond to what is out there, or is it a
11 commitment to respond to whatever future discovery requests may
12 ensue as a result of future investigations or future regulatory
13 compliance.

14 MR. KITCHEN: Commissioner Deason, as I sit here, I
15 knew of some Attorney General requests for discovery, I knew of
16 their request for discovery, the Office of Public Counsel. The
17 request I hear here is I don't know if that was a discovery
18 request that has been in our talking that you wanted us to give
19 that, and we haven't it, I guess is what we are saying. I
20 didn't know that that was outstanding discovery. **The stuff**
21 with the discovery, I know the Attorney General's office I have
22 worked with. We are trying to work this out. And a lot of
23 that is not going to matter. If we get this worked out, this
24 is truly driving some of it, that is why this has been the
25 priority. Now, if there was discovery from them, I

1 misunderstood that.

2 COMMISSIONER DEASON: Mr. Chairman, it seems to
3 me that -- I agree with you that there needs to be a commitment
4 for a regulated company to realistically respond to legitimate
5 discovery, realizing that there are legitimate objections that
6 can be made and we entertain those all the time. **But at the**
7 same time, it seems to me that we have in front of us a
8 settlement proposal that part of the bargaining, or part of the
9 quid pro quo is that this particular discovery becomes moot if
10 we accept the settlement and it is not protested. **And this is**
11 what I want to emphasize.

12 As I see this, this is a PAA. If we accept the
13 settlement and, for example, if Public Counsel is adamant that
14 they need their discovery, and they are the better judge of
15 that, not me, they can protest the settlement, it will go to
16 hearing, and I would suppose then it would become part of this
17 hearing process. And this Commission, the prehearing officer,
18 whoever that lucky person may be, could make a determination as
19 to what is or is not legitimate discovery and should be
20 complied with.

21 CHAIRMAN BAEZ: You sent me scurrying for the agenda,
22 Commissioner.

23 COMMISSIONER JABER: It is administrative.

24 CHAIRMAN BAEZ: No, it is administrative.

25 COMMISSIONER DEASON: So I am not so sure that this

1 is something that we absolutely have to decide right here and
2 now on the discovery questions, other than I am heartened by
3 what I hear as a commitment from the company to be a good
4 player in the future.

5 CHAIRMAN BAEZ: And, Commissioner, I only wanted to
6 drive the point home. I do understand that some of these go
7 away. I think Mr. Kitchen makes a good point, and you
8 recognize it. But since our court reporter was in the room, I
9 wanted it on the record somewhere that we are not going to be
10 engaging in that kind of wholesale disregard for staff's
11 requests, or OPC's where appropriate, for that matter. I mean,
12 I don't mind roping them in on this deal, as well. And really
13 that was merely my point. From my perspective, I don't need
14 that to be part of -- or I wouldn't be looking for that to be
15 part of a settlement, necessarily.

16 MR. BECK: Mr. Chairman, may I make --

17 COMMISSIONER JABER: Mr. Chairman, Commissioner
18 Bradley wanted to put something on the table, and I may be
19 supportive. I just have two questions to better understand the
20 nature of this company, if I could.

21 CHAIRMAN BAEZ: Go ahead and ask your questions. And
22 if Mr. Beck was going to say something, I don't want to shut
23 him out, either.

24 MR. BECK: Yes.

25 CHAIRMAN BAEZ: But let's let Commissioner Jaber ask

1 her questions.

2 COMMISSIONER JABER: This is to the company. The
3 financial discussion begs the question in my mind, how many
4 customer do you serve here in the state, and what is your
5 financial outlook? I think that is a fair question at this
6 point.

7 MR. KITCHEN: I can see that it is a very fair
8 question. I can try to get answers to them. I don't know the
9 financials. What would I tell you? All I know is if we could
10 pay the 150, we wouldn't have to put it over time.

11 COMMISSIONER JABER: I don't really ask that question
12 in conjunction with the bond issue, I really don't. Just
13 educate me on the company that you are here today to represent.
14 How many customers do they serve, how long have you been in the
15 state? I understand, it looks like the tariff and
16 certification became effective in 1996. Well, as
17 telecommunications goes, I think that is a long time. So do
18 you know how many customers?

19 MR. KITCHEN: No, ma'am, I don't. I can ask them.

20 COMMISSIONER JABER: Well, I can ask staff. Mr.
21 Kennedy, anyone on staff, what are we talking about here?

22 MR. KENNEDY: We don't know how many customers they
23 have. I don't know the answer to that question.

24 COMMISSIONER JABER: Annual reports are not required
25 to be -- IXC's don't have to file annual reports, right?

1 MR. KENNEDY: As I recall off the top of my head, I
2 did look at what they paid in RAF, and if I'm not mistaken it
3 was the minimum amounts.

4 COMMISSIONER JABER: So are we are talking about less
5 than 100 customers?

6 MR. KENNEDY: Probably.

7 COMMISSIONER JABER: Mr. Beck.

8 MR. BECK: Thank you, Commissioner Jaber. I just
9 wanted to comment. One of the things that we would look at in
10 any settlement is to have a comfort level that the problems
11 have stopped. Now, the staff recommendation deals with
12 complaints going through March 23rd, 2004. You will notice
13 that on Page 2 of the staff recommendation they mention that
14 there has been 22 slamming complaints, three complaints about
15 improper billing, and one cramming complaint since that time.

16 Those complaints are not the subject of the actual
17 recommendation the staff has brought forward, but we would not
18 enter into any settlement unless we were convinced that the
19 problems had stopped. Now, the company has simply refused to
20 provide us any documents in response to requests for production
21 of documents, and there has been but one meeting in the months
22 since this has been deferred to reach a settlement. Now, I'm
23 not shy about filing motions to compel on documents, but
24 basically I didn't see any realistic progress towards
25 settlement.

1 I have had one meeting. You know, counsel has come
2 forward today with concessions that it made directly to the
3 Commission. Well, why weren't those made in a meeting that the
4 company asked for ahead of time? It seems to me there has been
5 very little progress towards settlement in this case. And we
6 have no comfort that the problems have stopped, because the
7 company won't -- and the company won't provide any
8 documentation to back that up. So we support the staff
9 recommendation as it is.

10 COMMISSIONER DEASON: Let me ask staff a question.
11 Under the settlement, isn't there a requirement for reporting
12 to ascertain as to the extent as to whether the corrective
13 measures are working?

14 MR. KENNEDY: That's correct, they have offered that
15 as part of their settlement, reporting. And we would be
16 reviewing certain things, as well, if it were accepted.

17 COMMISSIONER DEASON: And I guess this is a legal
18 question. If the Commission accepts the settlement and there
19 is a protest of that, then where would we find ourselves at
20 that point?

21 MR. FORDHAM: Obviously at that point, Commissioner,
22 it is set for hearing and we go into a full blown
23 administrative hearing. But I would like to also add that one
24 reason for the skepticism of staff is based on the history of
25 this company and the related companies, which are part of what

1 we have loosely called a consortium.

2 Within the past month, three companies which have
3 been very closely connected with this one and apparently under
4 the same direction have just folded up and went away, and we
5 are three times in a month asking the Department of Financial
6 Services for permission to write off the huge amounts of money
7 that those three have owed this Commission. And these things
8 have not been discussed here today, and maybe have no bearing
9 except that the full history of this company, the full
10 background of this company does include a pattern of maxing
11 everything out, and finally when we reach that point where an
12 order issues, we just never hear from them again. And that is
13 why staff has this maybe overly cautious approach or skepticism
14 toward anything that this company has presented to it.

15 But back to your question, Commissioner, and I'm
16 sorry for digressing, certainly if the Commission were to move
17 staff today we would continue in good faith negotiating so that
18 a hearing -- or it would likely be protested, but that just
19 gives a few more months to negotiate. But staff would want to
20 be very certain on the new third-party verification company,
21 for example, that it was truly a legitimate company.

22 Just to throw out a name and say, okay, we are not
23 going to use the one that you asked us to -- or that we told
24 you last time we were going to use -- and I might add at the
25 negotiation they were totally immovable on that, and then it

1 was a surprise to us this morning that they come in and say,
2 oh, yes, that is no biggy, we will pick another one. But we
3 would need some opportunity to totally verify the authenticity
4 of any third-party verification company they use. All of this
5 based on the history of this company and the related companies
6 that we have been dealing with over the past months.

7 So I just wanted to point that out as a reason for
8 staff's skepticism and accepting at face value anything this
9 company has represented to us.

10 COMMISSIONER DAVIDSON: Chairman.

11 CHAIRMAN BAEZ: Commissioner Davidson and then
12 Commissioner Bradley.

13 COMMISSIONER DAVIDSON: Staff lists a number of
14 reasons that it does not support the settlement proposal. The
15 first one relates to using prerecorded questions with a simple
16 response of yes in its third-party verification. What is
17 staff's specific concern there? And I may be mistaken, have
18 you agreed to address that first issue?

19 MR. KITCHEN: It's the third-party verifications.
20 You say the first issue.

21 COMMISSIONER DAVIDSON: Well, staff states -- staff
22 requested that New Century cease using preordered questions
23 with a simple response of yes. The revised script follows the
24 same format with the exception that the statements required by
25 the Commission's slamming rule that were previously excluded

1 have been added.

2 COMMISSIONER JABER: Page 3 of staff's
3 recommendation.

4 COMMISSIONER DAVIDSON: Page 3 of staff's
5 recommendation. So has that issue -- assuming third-party
6 verification is taken care of, does that render that issue
7 resolved?

8 MR. BUYS: If the company agrees to modify its
9 proposed verification scripts so that the customer is not
10 simply asked to listen to a recorded verification and simply
11 respond yes or no to each one of those recorded questions and
12 actually use a live verifier or another form of answer that we
13 can identify the customer as having made that authorization.

14 COMMISSIONER DAVIDSON: What is the standard in the
15 industry on this? I mean, do other companies use this
16 prerecorded verification?

17 MR. KENNEDY: There are some that do, yes. It is a
18 mixed bag. Some live. They have offered here to go live
19 recordings.

20 COMMISSIONER DAVIDSON: And staff has requested that
21 New Century record the telemarketing calls. Is there a
22 standard in Florida, do we know whether other long distance
23 companies record such calls?

24 MR. KENNEDY: To the best of our knowledge, they do
25 not. And we would relinquish on that, I suppose, if we go

1 forward.

2 COMMISSIONER DAVIDSON: Just sitting here, I mean,
3 I'm not putting out a motion, I'm just sort of putting out
4 where I am on this issue. I would support staff's
5 recommendation with these sort of clarification points. One,
6 live third-party verification, sort of addressing the issue
7 that staff just pointed out. Relinquish the requirement of
8 recording the telemarketing calls. Require a 100 percent
9 independent and unaffiliated third-party verification company,
10 meaning no company owned by a wife, no company owned by a
11 child, no company owned by another LLC owned by the lawyer. I
12 mean, truly independent third-party.

13 The company should provide on that Issue 4, flipping
14 the page, all information related to complaints that the
15 company received. I mean, that is a legitimate request. And I
16 don't know who the prehearing officer is, or how this works
17 out, but that is legitimate in the context of this dispute.

18 I would require a surety bond in the amount of
19 \$15,000 to secure the first payment, but also to secure three
20 weeks of payments going into the future. Fifteen thousand
21 dollars, in view of the amount of \$151,000 that the company
22 said it can pay, is not at all unreasonable. It is ten percent
23 of that amount. And, frankly, if a company can't come up with
24 \$15,000, then in my view it shouldn't be doing business in the
25 state of Florida.

1 And, the sixth item, Office of Public Counsel
2 requests for production, I simply at this point don't know
3 enough about that. I think that should follow the normal
4 process. If the company objects to those, it can object and
5 bring that issue to us to decide. So that is just sort of
6 thinking out loud where I am on this.

7 I don't see the requirement of a surety unreasonable,
8 per se, but I do agree wholeheartedly with Commissioner Deason
9 that a million dollars is, on its face, unreasonable. And
10 staff admitted that it didn't really hope that it would get a
11 million, it was just a negotiating point.

12 CHAIRMAN BAEZ: Commissioner Bradley, do you have a
13 question?

14 COMMISSIONER BRADLEY: No. It sounds like a motion.

15 COMMISSIONER DAVIDSON: I just put it out there
16 for --

17 COMMISSIONER JABER: Thinking out loud.

18 COMMISSIONER BRADLEY: Well, what I would like to see
19 happen is that the company hire a nonaffiliated company that
20 staff can verify, and that you provide staff with the
21 information they need to have in order to verify that this is a
22 nonaffiliated company. And that you cease and desist, or work
23 out some language with staff that deals with the issue of the
24 yes and no questions. I think the million dollar surety bond
25 is going to drive the company out of business. That seems to

1 be unreasonable.

2 And I'm interested in the idea of a \$15,000 surety
3 bond in lieu of \$151,500 payment over six months. How would
4 that work? How would that concept work, Commissioner Davidson?

5 COMMISSIONER DAVIDSON: I apologize if I misspoke.
6 The surety bond was not in lieu of the voluntary contribution.
7 My intent was that the Commission would accept that voluntary
8 contribution of 151,500 according to the payment schedule
9 offered, but that payment of that amount be secured, in part,
10 by a \$15,000 surety bond, reducing that amount from a million
11 to 15,000 as a sign of good faith on the part of the company
12 and as some additional security in the event of continued
13 non-performance.

14 COMMISSIONER BRADLEY: So let me see if I understand.
15 So the \$15,000 would serve as surety for the first payment of
16 the 151,000.

17 COMMISSIONER DAVIDSON: No. The intent is there is a
18 \$15,000 surety bond that is posted that would remain in effect
19 until the entire 151,000 is paid for. Within ten days the
20 company would still have to pay the \$15,000 of its obligation,
21 and at that point in time -- at the point in time when the
22 company has satisfied its obligation, the bond would be
23 released.

24 Failing that, the bond would be released to satisfy
25 part of whatever would remain outstanding. And, again, that is

1 not a motion, I just put that out for discussion purposes.

2 COMMISSIONER DEASON: Well, I have a question on
3 that, then. I understand it is not a motion. If we were to
4 modify staff's recommendation to incorporate the changes and
5 clarifications which you just described, and we vote that out,
6 and if New Century comes forward with a position that they
7 indicate that they would be willing to comply with all of the
8 requirements, where do we find ourselves at that point? Could
9 staff take that and at that point issue -- where would we be
10 legally at that point?

11 CHAIRMAN BAEZ: Do you want to let --

12 COMMISSIONER DEASON: I direct to staff.

13 CHAIRMAN BAEZ: Do you want to let staff take it?

14 COMMISSIONER DEASON: Yes.

15 MR. MELSON: Remember the staff recommendation was to
16 reject the settlement offer. If you were to find --

17 COMMISSIONER DEASON: Let me interrupt for just a
18 second. But staff went to great lengths, and I applaud staff
19 for doing it, they explained in detail exactly what they
20 considered to be the deficiencies and what they considered to
21 be acceptable. We have had movement toward that. The
22 Commissioner has indicated some things are perhaps acceptable,
23 but that the bar still needs to be higher than what the company
24 is willing to agree to at this point.

25 So I guess my question then, maybe you understand the

1 question, the question is if we accept those requirements and
2 then the company at some future time is willing to come forward
3 and say, fine, we can live with that, what do we do at that
4 point?

5 MR. MELSON: And I didn't mean to -- I started with
6 an introductory phrase that I probably should have left off.
7 If the inclination is to accept the settlement offer provided
8 certain changes are made, I think you could vote as a PAA we
9 will accept the settlement offer provided the company within
10 ten days, or give them a period of time to come back with a
11 written offer of settlement that incorporates all of those
12 things. To the extent that lays down with what the Commission
13 has voted, you then have got a settlement subject only to a
14 protest by Public Counsel or some other party.

15 So I think you could do it in a way that wrapped it
16 all up today by saying you reject the settlement proposal as
17 is, you would accept a settlement proposal that also included
18 A, B, and C. And do that as a PAA with the expectation that
19 before that protest period had run the company would come back
20 with some indication in writing accepting the modifications, in
21 essence, you have made to their settlement offer.

22 COMMISSIONER DEASON: And if they do not come forward
23 with some indication that they would be willing to accept that
24 framework for a settlement, where do we find ourselves?

25 MR. MELSON: You find yourselves -- thinking out

1 loud, you find yourselves having rejected their initial
2 settlement offer, not yet having, in essence, issued a show
3 cause for specific amount, so it almost has to be come back. I
4 mean, it would be much cleaner if the company could commit
5 today --

6 COMMISSIONER DEASON: Maybe they can, I don't know.

7 MR. MELSON: -- to the items you have specified and
8 then the PAA today is simply to approve that settlement offer
9 as modified here orally at the agenda conference.

10 CHAIRMAN BAEZ: Mr. Melson, along those lines, would
11 it be possible to, for instance, issue the show cause as staff
12 recommends, which is, in effect, a rejection of the settlement
13 offer as it stands. But as part of the -- as part of that
14 issuance, that somehow this discussion is wrapped in because I
15 think the comment, and staff has been very assuring, I guess,
16 that negotiations even beyond issuance of a show cause, that
17 conversations and negotiations would be continuing leading up
18 to whatever hearings or whatever process remains. I mean, is
19 that an alternative that we have?

20 MR. MELSON: That would be an alternative,
21 essentially, to issue the show cause order, but to indicate
22 that you expect staff and the parties to continue to negotiate
23 and that the Commission would be favorably inclined to approve
24 nt offer that included X, Y, and Z. At that
25 the revised settlement offer, we could bring

1 it back to you at agenda, you could approve it at that point.
2 If we don't get a revised settlement offer, then you have got
3 the hammer out there, if you will, of the larger show cause
4 proceeding that is --

5 CHAIRMAN BAEZ: The process has been started.

6 MR. MELSON: The process has been started.

7 CHAIRMAN BAEZ: One or the other.

8 MR. MELSON: The process has been started.

9 CHAIRMAN BAEZ: Well, Commissioners, unless any of
10 you have any questions, I know that Commissioner Bradley wanted
11 to take a stab at tossing something out there.

12 COMMISSIONER BRADLEY: Right. And I'm trying to
13 figure out how to encompass that, how to put that into a
14 motion. What would the wording -- I need to have a
15 recommendation as to --

16 CHAIRMAN BAEZ: Well, you heard Mr. Melson --

17 COMMISSIONER BRADLEY: -- as to what the wording
18 would be in order to put forth the motion that encompasses
19 everything that was discussed.

20 CHAIRMAN BAEZ: Let me see if I can answer your
21 question. I think you heard Mr. Melson say that there is, I
22 guess, a couple of ways, at least, of going forward with it.
23 If it is this Commission's intention by your motion to say, you
24 know what, there were six issues here that staff had concerns
25 with, as part of a motion I'm comfortable with one, two, three,

1 or four, I think I heard you say, you know, whichever ones they
2 were. That the motion might be to go ahead and accept staff's
3 recommendation, but also with the note that we would be
4 inclined to accept any future settlement offer that might
5 include these kinds of requirements in addition to that which
6 was already offered.

7 COMMISSIONER BRADLEY: Well, I would be inclined to
8 put this motion on the table, that New Century be required to
9 use a nonaffiliated company for verification purposes; that New
10 Century cease to use yes or no questions; that New Century be
11 required to post a \$15,000 surety bond; and that New Century
12 be -- and that we accept their offer of \$151,500 to be paid in
13 installments over six months. Now, there may be some other
14 issues that other Commissioners might want to add, but that
15 would be my proposal.

16 COMMISSIONER DEASON: A clarifying question. On the
17 yes/no answers, I think there has been a commitment to do live
18 recording of third-party verification. I think that addresses
19 staff's concern, is that correct? Okay. So, Commissioner, I
20 believe if we could just acknowledge the live recording of
21 third-party verification.

22 COMMISSIONER BRADLEY: Okay. And to make it clear
23 that New Century is to respond to any discovery questions that
24 are presented to them so that staff can be assured of the fact
25 that what we are ordering is, in fact, being done to give staff

1 some comfort. That would encompass what I have in mind.

2 CHAIRMAN BAEZ: And I'm trying to think back to what
3 Commissioner Davidson had suggested, as well. Did he get --

4 COMMISSIONER DAVIDSON: I think so. I would offer a
5 friendly amendment, Commissioner Bradley, that we would --
6 picking up on Mr. Melson's advice -- reject the settlement
7 offer as is, but indicate we would accept -- I would like to
8 capture all the terms of the settlement offer currently on the
9 thought that appear at Page 2 and 3. Then with the
10 modifications you made for the \$15,000 surety bond, cease
11 recording prerecorded questions, and use live third-party
12 verification, cease using its current third-party verifier, and
13 instead utilize 100 percent independent and an unaffiliated
14 third-party verification company, and then provide the answers
15 to discovery.

16 So I think Commissioner Bradley captured everything.
17 I just wanted to make sure the record reflected that all of the
18 provisions of the offer on the table now would also come back
19 our way.

20 CHAIRMAN BAEZ: You accept that?

21 COMMISSIONER BRADLEY: Yes, that amendment.

22 CHAIRMAN BAEZ: All right. Is everybody clear on the
23 motion?

24 COMMISSIONER DEASON: No, I have one other point of
25 clarification.

1 CHAIRMAN BAEZ: One other point of clarification.

2 COMMISSIONER DEASON: When you say respond to
3 discovery, I think the only outstanding discovery in the legal
4 sense, I think, is what has been filed by Public Counsel. And
5 there has been -- there has been a response, it is just that
6 the response was objecting to everything.

7 MR. BECK: That's correct.

8 COMMISSIONER DEASON: So I can't prejudge what
9 those -- I mean, those objections may be legitimate, or maybe
10 every one of those objections would be overturned and we would
11 force them to respond. I can't prejudge that at this point.

12 CHAIRMAN BAEZ: And that is a fair point.

13 COMMISSIONER JABER: What about the staff questions,
14 though, Commissioner Deason, that is not --

15 (Simultaneous conversation.)

16 COMMISSIONER BRADLEY: I was referring more to
17 staff's questions.

18 CHAIRMAN BAEZ: I think at some point in the
19 discussion we started calling everything discovery, and that is
20 really not an accurate portrayal. Requests for production --

21 COMMISSIONER JABER: What you call it doesn't matter.
22 Staff has made a request for information, and unless there have
23 been legitimate objections, I understood the motion to cover we
24 need responses to the staff questions.

25 COMMISSIONER DAVIDSON: The motion covered the Item 4

1 on Page 4 of the staff rec that New Century provide staff with
2 all information related to complaints that the customers have
3 received from Florida consumers. That, in my view, is really
4 sort of essential to this. But I had not intended that we
5 include the OPC discovery, because there are formal objections
6 that have been lodged, and those would have to be ruled upon by
7 the prehearing officer or someone.

8 But my thought was in the nature of this dispute, you
9 know, the information related to complaints from Florida
10 customers is clearly something that staff should have the
11 benefit of. And maybe there is nothing other than what has
12 been produced, but that was the scope of that provision.

13 And, another issue might be in terms of the timing if
14 no settlement offer is made by a date certain, say within ten
15 days of the date of the order, perhaps a show cause order could
16 issue immediately. I know this was a timing issue that came up
17 in the discussions.

18 CHAIRMAN BAEZ: Commissioner Davidson, and perhaps I
19 am misinterpreting Commissioner Bradley's motion, but I think
20 the motion was to go ahead and accept staff's recommendation
21 and have these terms, which have been the subject of a friendly
22 amendment, incorporated in a manner of guidance in terms of
23 what this Commission's inclination may be if it were to be
24 represented. Is that fair?

25 COMMISSIONER BRADLEY: My motion probably modifies

1 what staff has recommended, doesn't it?

2 CHAIRMAN BAEZ: Well, exactly. To the extent that if
3 your motion is to accept the issue of a show cause order which
4 will leave the process there out, Commissioner Davidson, it
5 will leave the process moving. And, again, with the friendly
6 amendment that was discussed here by the Commissioners, that
7 there is some guidance out there as to what, based on our
8 conversation, we might expect to see in a subsequent settlement
9 offer from the company. Which would essentially address the
10 concerns one way or the other, address the concerns that were
11 set forth by the staff is what I think I heard.

12 COMMISSIONER BRADLEY: Okay. And my motion, the
13 intent of my motion was to include some of what staff had put
14 before us in terms of addressing the concerns that they have
15 with respect to being able to gather the information that they
16 need to have in order to verify that things are as they should
17 be with respect to the elimination of the --

18 CHAIRMAN BAEZ: The third-party verifier.

19 COMMISSIONER BRADLEY: Right. And just to get some
20 direction and to deal with the settlement offer, but not to
21 incorporate the million dollar surety bond.

22 CHAIRMAN BAEZ: No, I think you made it clear that
23 that was reduced per Commissioner Davidson's suggestion to
24 \$15,000.

25 COMMISSIONER BRADLEY: Is there anyone who can repeat

1 back then what --

2 CHAIRMAN BAEZ: What's that?

3 COMMISSIONER DAVIDSON: Here is my understanding of
4 the --

5 COMMISSIONER BRADLEY: Right, what is the
6 understanding that we have here?

7 COMMISSIONER DAVIDSON: We are accepting staff's
8 recommendation to reject the settlement offer as is, and we
9 were indicating that we would accept a settlement offer that
10 included all of these provisions. But we have to -- the
11 company would have to make that. And if they don't, as the
12 Chairman pointed out, we proceed on track with this objection
13 to the PAA, et cetera. And if we do get a settlement offer, we
14 have indicated what would be acceptable to us and we would
15 accept and move on.

16 COMMISSIONER BRADLEY: Okay. That's fine.

17 CHAIRMAN BAEZ: Is that your motion, Commissioner?

18 COMMISSIONER BRADLEY: Yes, that is my motion.

19 COMMISSIONER DEASON: One other clarification
20 question. Does staff have the authority -- if the company is
21 willing to meet all of the requirements as have been described
22 herein, they file that with staff, does that have to come back
23 to us or can staff accept that and issue a PAA order saying
24 that the Commission accepts the stipulation?

25 COMMISSIONER JABER: The PAA order should have

1 already been issued, right? Isn't the motion within ten days
2 of the order being issued, right?

3 COMMISSIONER DEASON: I don't know. Maybe we need to
4 get it clarified.

5 COMMISSIONER JABER: I understood, just for purposes
6 of the record, Mr. Melson, that it would give the company an
7 opportunity, ten days within issuance of the order, to come
8 back with language consistent with our vote herein. And for
9 whatever it is worth, to the degree you are worried about
10 authority staff would have, I certainly would entertain a
11 further amendment to allow staff to have that authority.

12 COMMISSIONER DEASON: But then there has to be
13 sufficient time for Public Counsel to make, or any other party
14 that may be out there, to have adequate time or an adequate
15 protest period to take a decision as to whether they will or
16 will not protest.

17 If the ten days is part of that protest period, and
18 on the tenth day the company files a settlement, then I don't
19 think that is -- that is cutting down on other parties'
20 opportunity to know where things stand as to what they are
21 going to object to or request a hearing upon.

22 MR. MELSON: And, Commissioner, I apologize, my
23 thinking on this may not be as clear as it needs to be. At
24 this point the Commission has initiated a compliance
25 investigation. I'm not sure that if you were to say today we

1 are going to accept the company's settlement proposal that
2 another party needs a point of entry into that. You are not
3 affecting the citizens right ultimately. You have initiated an
4 investigation, you are terminating the investigation by
5 accepting a settlement offer.

6 COMMISSIONER DEASON: So you are saying that if we
7 were to -- for example, if we were to reject staff's
8 recommendation, I know this is not on the table, but if we were
9 going to reject staff's recommendation and accept the
10 settlement proposal, we could do that as final agency action
11 today?

12 MR. MELSON: As I sit here I'm not thinking of why
13 you couldn't.

14 MR. BECK: Can I address that, Commissioner?

15 CHAIRMAN BAEZ: I think Mr. Beck may have a
16 difference.

17 MR. BECK: We have been granted intervention,
18 Commissioner Deason, in the docket. I don't think you can just
19 unilaterally, as final agency action, settle the docket over
20 our objection without giving us a point of entry to object to
21 it.

22 CHAIRMAN BAEZ: Which is why this is PAA.

23 COMMISSIONER DEASON: And even if we could, I don't
24 know that it would be wise.

25 MR. BECK: And then the other thing, of course, we

1 could do is the Commission apparently is ignoring the last six
2 months of complaints, because this docket doesn't deal with the
3 last six months of complaints. The evidence is that the
4 company is continuing to violate the rules. So one of our
5 options, for example, could be to bring a separate complaint
6 over them.

7 COMMISSIONER JABER: Mr. Beck, this has come up
8 before, very similar situations, and my recollection is we
9 accepted -- I can't think of the case, but we accepted your
10 position on the similar situation. Help me understand, isn't
11 it also that you can protest the PAA order? You can protest
12 the PAA order.

13 MR. BECK: Right. The point I was addressing was the
14 possibility of issuing a final order today without giving us a
15 right to seek an administrative hearing on it. That I don't
16 think you can do.

17 CHAIRMAN BAEZ: If the show cause gets issued --
18 again, whether or not there is a ten-day fuse on this or not,
19 as might have been suggested, if the show cause gets issued,
20 perhaps there is some direction to be taken from the order. A
21 settlement offer comes back that staff can get behind, and it
22 is presented with a favorable recommendation in settlement and,
23 in essence, negating the show cause proceeding, or resolving
24 the shows cause proceeding, would that still be PAA?

25 MR. MELSON: I consulted with Ms. Keating and she

1 tells me the practice has been on these types of settlements to
2 do them as PAAs to give a point of entry. I know there has
3 been at least one situation which you have approved a
4 settlement where not all parties had signed onto it, but
5 apparently the more customary practice has been to deal with
6 them as PAAs.

7 The cleanest procedural way, and I'm not sure this is
8 the way you want it to go, might be to issue a show cause as to
9 why they shouldn't pay \$420,000, indicate that within the 20
10 days they normally have to respond to the show cause they
11 either show cause why they should not be fined, or they put a
12 settlement proposal on the table that meets these criteria.

13 If they do the former, we are marching toward a
14 hearing. If they do the latter and come forward with a
15 settlement proposal, we bring it back to you as a PAA with the
16 expectation you will approve it, issue the order that at that
17 point triggers Public Counsel's opportunity to have a point of
18 entry.

19 It may be a long way to get there, but at least it is
20 orderly and we know where we go, depending on what kind of
21 response we get from the company.

22 COMMISSIONER JABER: Mr. Chairman, I think that is
23 cleaner. Because, I will tell you, what threw me off is when
24 you said if this is a show cause proceeding, and once we issue
25 a show cause. Staff's recommendation is not currently styled

1 as such.

2 CHAIRMAN BAEZ: Okay.

3 COMMISSIONER JABER: And I think -- if I could put
4 words in Commissioner Davidson's mouth, I think that is what he
5 was getting to when he said, and automatically, if certain
6 things don't happen, maybe an order to show cause is issued.
7 That comment and what Mr. Melson just said accomplishes what it
8 is we want. We want to issue an order to show cause that
9 allows a point of entry for the company and perhaps Public
10 Counsel. But if the response to the show cause is, well, we
11 are going to agree to all of thee things, lo and behold, it
12 meets the discussion that we had. It complies with the
13 discussion we had, and that will maybe be received favorably,
14 depending on some other things that could happen. **So I think**
15 that is much more of a cleaner route. Perhaps Commissioner
16 Bradley would like to think about withdrawing his motion and
17 entertaining some new language.

18 COMMISSIONER BRADLEY: Well, that was the intent of
19 my motion anyhow, so by all means, if my motion is unclear, I
20 will withdraw my motion and accept substitute language.

21 CHAIRMAN BAEZ: And, Commissioners, just almost at my
22 own risk, is everyone clear as to the substitute motion? Mr.
23 Melson, can you go ahead and help us with this. Repeat my
24 motion back to me.

25 MR. MELSON: I understand the sense of the Commission

1 is to show cause New Century why they should not be fined
2 \$420,000 for violation of Rule 25-4.118, to give them the
3 normal 20 days to respond to that, but to indicate that an
4 acceptable response would to be make an offer of settlement
5 that includes the terms they have previously put forward, plus
6 the additional ones we have discussed today. And if they make
7 such a settlement offer, the staff will bring that back to the
8 Commission for consideration, and at that point we will have
9 our act together on whether that order can be final or needs to
10 be PAA.

11 CHAIRMAN BAEZ: Commissioner Bradley, it's to you. I
12 thought I heard Mr. Melson channeling Commissioner Bradley
13 there.

14 COMMISSIONER BRADLEY: Unless there are some other
15 points to be discussed, that would be my motion.

16 COMMISSIONER DAVIDSON: Second.

17 CHAIRMAN BAEZ: A motion and a second, Commissioners.

18 COMMISSIONER DEASON: One final thing before we vote.

19 CHAIRMAN BAEZ: Yes, please.

20 COMMISSIONER DEASON: If the company has any position
21 as to what -- they may be willing to accept, or maybe they -- I
22 don't know, but I would like to hear from them one last time
23 before we actually vote.

24 CHAIRMAN BAEZ: Mr. Kitchen.

25 MR. KITCHEN: Thank you. Mr. Chairman and

1 Commissioners, the only thing that jumps out at me, you know, I
2 am so gun-shy about bonds. Can we at least consider posting
3 the money in escrow with the Commission, or whatever, to stay
4 away from bonds, bond premiums, that type of stuff.

5 COMMISSIONER JABER: Escrow, Mr. Chairman, is
6 something that has worked in the past.

7 COMMISSIONER BRADLEY: I would find that --

8 COMMISSIONER DEASON: It would accomplish the same
9 thing, maybe cheaper.

10 COMMISSIONER BRADLEY: That would be acceptable.

11 CHAIRMAN BAEZ: We will have the motion as amended.

12 COMMISSIONER BRADLEY: Yes.

13 CHAIRMAN BAEZ: Is there a second?

14 COMMISSIONER DAVIDSON: Second.

15 CHAIRMAN BAEZ: A motion and a second. All those in
16 favor say aye.

17 COMMISSIONER BRADLEY: Aye.

18 COMMISSIONER DEASON: Aye.

19 COMMISSIONER BRADLEY: Aye.

20 CHAIRMAN BAEZ: Aye.

21 COMMISSIONER JABER: Mr. Chairman, I'm going to
22 support the motion. Mr. Kitchen, you see that -- tell me your
23 last name again?

24 MR. KITCHEN: Kitchen.

25 COMMISSIONER JABER: Do you see the gentleman at that

1 corner?

2 MR. KITCHEN: Oh, yes.

3 COMMISSIONER JABER: You need to go work with him.

4 You see the gentleman at that corner? You need to
5 work with him, too.

6 MR. KITCHEN: Thank you so much. I agree with you.

7 CHAIRMAN BAEZ: Meet your new best friends.

8 COMMISSIONER JABER: I support the motion, Mr.

9 Chairman.

10 CHAIRMAN BAEZ: Thank you, Commissioners. And thank
11 you all for your input.

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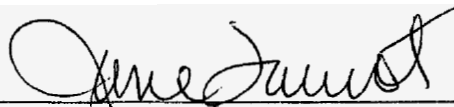
CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 13th day of October, 2004.



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