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Public Service Commission

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CLERK

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DATE: June 17, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Buys) DRB
Office of the General Counsel (Fordham, Rojas, Teitzman) CF
Office of Standards Control & Reporting (Lowery) GA

RE: Docket No. 040062-TI – 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.

AGENDA: 06/29/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Place on agenda item list adjacent to Docket Nos. 020645-TI and 031031-TI.

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040062.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission accept New Century Telecom, Inc.'s settlement offer to resolve forty-two (42) apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

Recommendation: No. The Commission should reject New Century Telecom, Inc.'s settlement offer. Instead, the Commission should penalize the company \$10,000 per apparent violation, for a total of \$420,000, for 42 apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection. If New Century Telecom, Inc. fails to request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If the company fails to pay the amount of the penalty within fourteen calendar days

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after issuance of the Consummating Order, registration number TI427 should be removed from the register, the company's tariff should be cancelled, and the company should also be required to immediately cease and desist providing intrastate interexchange telecommunications services within Florida. **(Buys, L. Fordham, Rojas, Teitzman)**

Staff Analysis: Section 364.603, Florida Statutes, states:

The commission shall adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service. Such rules shall be consistent with the Telecommunications Act of 1996, provide for specific verification methodologies, provide for the notification to subscribers of the ability to freeze the subscriber's choice of carriers at no charge, allow for a subscriber's change to be considered valid if verification was performed consistent with the commission's rules, provide for remedies for violations of the rules, and allow for the imposition of other penalties available in this chapter.

To implement Section 364.603, Florida Statutes, the Commission adopted Rule 25-4.118, F.A.C., to govern carrier change procedures (Attachment A).

On January 21, 2004, staff opened this docket to address New Century's apparent slamming infractions and misleading marketing tactics. Staff filed its recommendation on April 21, 2004, for the Commission to impose a \$420,000 penalty upon New Century for 42 apparent slamming violations. The item was deferred from the May 3, 2004, Agenda Conference at the company's request. Staff's recommendation was filed again on May 6, 2004. On May 12, 2004, New Century submitted its settlement proposal (Attachment B) to resolve the apparent slamming and marketing issues in this docket. Consequently, the item was deferred from the May 18, 2004, Agenda Conference to allow staff to address the company's settlement proposal.

In its settlement proposal, New Century is offering to do the following:

- Make a voluntary contribution to the Florida General Revenue Fund in the amount of \$151,000. The company is offering to pay \$15,150 within ten days of the effective date of its settlement; fourteen days thereafter, the company will pay the amount of \$5,000 each week until the balance is paid. A final payment in the amount of \$1,350 will be made in the final (28th) week.
- Refund or credit the full amount of any charges incurred by each of the 42 customers to the extent not already credited or refunded.
- Establish a compliance program that will establish a strict quality standard. The company did not expound on the compliance program.
- On a going forward basis, the company will promptly and in good faith address and resolve all complaints regarding its services in a reasonable manner consistent with its settlement and its compliance program.
- Within 60 days from the effective date of its settlement, the company will provide a formal report and additional reports every twelve months, continuing for 26 months

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from the effective date. The reports will include (1) the status of the company's progress in implementing its settlement, (2) a list of all infractions assigned to personnel related to its settlement, and (3) copies of all customer complaints related to the company's compliance with its settlement for the period since the previous report, including copies of the resolution of any such complaint.

- Use the third party verification script attached to its settlement offer and implement any changes necessary to comply with the Commission's rules, if needed, within 60 days from the effective date of its settlement offer.

New Century structured its settlement as an agreement between staff and the company's president, Karyn Bartel. The company's settlement offer also states that its decision to enter into its settlement agreement is expressly contingent upon the settlement being signed without revision, change, addition, or modification. Staff cannot execute a settlement agreement between the Commission and the company. Further, the company also wants the docket sealed and hidden from the public record. In the agreement, the company included the following provisions which would not be compliant with the Florida Government in the Sunshine law:

- The parties agree that this Settlement shall become part of the Commission's record but shall be kept from disclosure to the public.
- The parties agree that, within five business days after the date of this Settlement the record shall be closed and sealed.

Moreover, in its settlement offer, the company failed to address the misleading marketing tactics that were apparently employed by the company. The company did not agree to cease marketing in Florida, nor did it agree to discontinue the specific marketing activities that caused the apparent slamming infractions. Further, staff does not believe that the proposed telemarketing script submitted by the company (Attachment C) will resolve the problems the company experienced with its verification process. The initial verification script used by the company included a simple "yes" response from the customer following a pre-recorded question. The revised script follows the same format with the exception that the specific statements that were previously excluded have been added. It is staff's opinion that the company is involved in editing the verification recordings it submits to the Commission so that it appears the customer authorized service. This issue is discussed in later paragraphs. The verification script format the company proposes to use, in staff's opinion, is still susceptible to editing.

Further, New Century should not be permitted to make payment installments and should be ordered to pay the full penalty amount of \$420,000. Staff fears that the company may not honor its obligation to make the payments according to its agreement and may move its customer base to another company and cease operations under New Century and abandon the corporation. Staff suspects New Century, along with Miko Telephone Communications, Inc. (Miko) is part of a consortium of at least nine companies (collectively referred to herein as the "Consortium") that are responsible for one-third of the slamming infractions in Florida during the past five years. The Consortium is discussed in detail in Attachment D.

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Staff believes that New Century is the latest company in The Consortium to perpetuate the Consortium's slamming activities in Florida. By New Century's admission, Miko's customers were transferred to New Century. Staff believes the transfer of customers from Miko to New Century is an attempt by the Consortium to avoid regulatory enforcement against Miko and the Commission should also consider the additional 154 apparent slamming violations against Miko when considering staff's recommendation in this docket. In Docket No. 031031-TI, Miko is charged with 154 apparent slamming infractions and staff is recommending that the Commission impose a penalty upon Miko in the amount of \$1.54 million. However, The Helein Law Group, LLC (Helein) informed staff that it was former counsel to Miko, and that Miko currently has no assets, no employees, and no customers. Apparently, Miko has ceased to exist and staff does not expect any contact from Miko or its legal counsel.

New Century is a switchless reseller of interexchange telecommunications services located at 8180 Greensboro Drive., #700, McLean, VA, the same address of the company's legal counsel, Helein. In fact, Mr. Charles H. Helein was listed as the Chairman/CEO of New Century since the company's inception in March 1996. The ownership of New Century was transferred to Kayrn Bartel on or about August 1, 2002. The Commission acknowledged the transfer of ownership in Docket No. 020130-TI through Order No. PSC-02-1089-PAA-TI, issued August 9, 2002. On March 25, 2004, in its 2004 Annual Report filed with the Secretary of State, Division of Corporations, New Century deleted Charles H. Helein as the CEO and added Karyn Bartel. Karyn Bartel was associated with UKI Communications, Inc. (UKI) in some management capacity before becoming president of New Century as discussed in Attachment D. Further, staff has addressed slamming violations against UKI in Docket No. 020645-TI, which UKI has failed to resolve.

Upon reviewing the customer complaints, staff determined that New Century appears to be employing the same unlawful telemarketing tactics used by Miko. After more than seven years without any complaints against New Century, the Commission began to receive slamming complaints against New Century in August 2003; about the same time the complaints against Miko declined. However, staff believes that New Century did not provide any significant service in Florida prior to August 2003.

From August 26, 2003, through March 23, 2004, the Commission received fifty-four (54) slamming complaints against New Century Telecom, Inc. (New Century) from Florida consumers. Staff determined that forty-two (42) of the slamming complaints appear to be violations of Rule 25-4.118, F.A.C., because the company failed to comply with the specific verification methodologies required by the Commission's slamming rules and the apparent egregious nature of the marketing utilized by the company.

In 9 cases, listed in Attachment E, New Century failed to provide proof in the form of a TPV recording that the customer authorized New Century to change service providers in accordance with Rule 25-4.118(1) and (2), F.A.C.

In 27 cases, listed in Attachment F, the TPVs submitted by New Century did not contain all the specific verification information required by Rule 25-4.118(2)(c), F.A.C., listed in subsection (3)(a) 1. through 5. Staff determined that the TPVs submitted by New Century were missing the following:

- *The statement that the customer's change request will apply only to 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.*

In the remaining six cases, listed in Attachment G, New Century provided staff with a TPV in which the customer authorized a carrier change for Miko, not New Century. The company claims that it purchased Miko's customer base and transferred Miko's customers to New Century. However, New Century did not request a rule waiver to transfer the customer base pursuant to Rule 25-24.455(4), F.A.C.

New Century markets its services to Florida consumers through its own telemarketers who apparently employ a variety of sales pitches to persuade the customers to provide their name, address, telephone number, and date of birth or mother's maiden name. Staff believes that information is then used to create a fraudulent verification recording. On September 22, 2003, Ms. Alicia Figueroa's long distance service was switched to New Century without her authorization. In its response to her complaint, Request No. 567027T, New Century reported to staff that it acquired the customer base from Miko, and that Miko was Ms. Figueroa's authorized provider. However, Ms. Figueroa states in her letter to staff dated October 31, 2003, that she utilized IDT as her long distance carrier at the time of the slam. In December 2002, Miko also switched Ms. Figueroa's service without her authorization. In its response to her complaint, Request No. 521163T, Miko stated that Ms. Figueroa's account was cancelled on February 24, 2003. Hence, Ms. Figueroa was not a Miko customer as New Century reported, and it appears New Century switched her service without her authorization. Thus, it appears that New Century provided the Commission with false information regarding Ms. Figueroa's complaint. Further, in its response to the complaint, New Century sent staff the same recording of the TPV that Miko sent staff for Ms. Figueroa's prior complaint against Miko. Upon review of both TPV recordings, staff determined that the two recordings appear to be from the same verification of Ms. Figueroa in December 2002, except the TPV recording submitted by New Century was missing additional statements and conversation between the customer and verifier that was heard in the original recording submitted by Miko. Hence, it appears that New Century electronically altered the verification recording before submitting it to the Commission.

New Century's sales tactics involve soliciting a free long distance calling card to try New Century's service without any obligation or offering customers a promotional check. After reviewing the complaints, staff found no evidence that New Century's telemarketers advised the customers that the purpose of the call was to solicit a change of the service provider of the customer as required by Rule 25-4.118(9)(b), F.A.C. Most importantly, it appears that New Century's telemarketers made misleading and deceptive references during telemarketing and verification while soliciting for subscribers in apparent violation of Rule 25-4.118 (10), F.A.C.; some of the customers reported they never received the free calling card promised them in the telemarketing solicitation.

In a follow-up letter to the complaint filed by Frank and Ricci App (Attachment H), the Apps state that New Century mislead them by offering a free prepaid phone card for no cost or obligation. Ricci App verified her name and address by responding "yes" to computer generated questions. The Apps did not receive the free prepaid calling card, and instead, their local toll and long distance service was switched to New Century. The Apps contacted New Century who

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informed them that the company has a recording of the conversation with Ricci App. The Apps claim the recording was edited to include additional questions regarding the change in long distance service providers to make the recording appear as if she agreed to change their long distance service provider.

In some of the TPVs staff reviewed, the telemarketer stays on the line during the verification process and prompts the customer to answer verification questions; meaning the TPV is not performed by an independent third party as required by Rule 25-4.118(2)(c), F.A.C. Hence, the TPVs the company submitted to the Commission as proof the customers authorized New Century to change their service providers are not considered by staff to be valid. In addition, when resolving the slamming complaints, New Century failed to refund the charges within 45 days of notification to the company by the customer pursuant to Rule 25-4.118(8), F.A.C.

In addition, Rule 25-4.118(13)(b), F.A.C., states that in determining whether fines or other remedies are appropriate for a slamming infraction, the Commission shall consider among other actions, the actions taken by the company to mitigate or undo the effects of the unauthorized change. These actions include but are not limited to whether the company, including its agents and contractors followed the procedures required under subsection (2) with respect to the person requesting the change in good faith, complied with the credit procedures of subsection (8), took prompt action in response to the unauthorized change, and took other corrective action to remedy the unauthorized change appropriate under the circumstances.

Based on the requirements of Rule 25-4.118(13)(a), F.A.C., New Century appears to have committed 42 unauthorized carrier changes. First, New Century did not follow the procedures required under Rule 25-4.118(2), F.A.C. Second, New Century did not comply with the credit procedures required under Rule 25-4.118(8), F.A.C. Third, New Century's TPVs do not comply with Rule 25-4.118(3), F.A.C. Fourth, it appears that New Century's telemarketers made misleading and deceptive references during telemarketing and verification in apparent violation of Rule 25-4.118(10), F.A.C. Fifth, it appears New Century submitted fraudulent TPVs and false information to the Commission when responding to consumer complaints.

Based on the aforementioned, staff believes that New Century's failure to comply with the requirements of Rule 25-4.118, F.A.C. is a "willful violation" of Sections 364.603, Florida Statutes, in the sense intended by Section 364.285, Florida Statutes.

Pursuant to Section 364.285(1), Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364, Florida Statutes.

Section 364.285(1), Florida Statutes, however, does not define what it is to "willfully violate" a rule or order. Nevertheless, it appears plain that the intent of the statutory language is to penalize those who affirmatively act in opposition to a Commission order or rule. See, Florida State Racing Commission v. Ponce de Leon Trotting Association, 151 So.2d 633, 634 & n.4 (Fla. 1963); c.f., McKenzie Tank Lines, Inc. v. McCauley, 418 So.2d 1177, 1181 (Fla. 1st DCA

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1982) (there must be an intentional commission of an act violative of a statute with knowledge that such an act is likely to result in serious injury) [citing Smit v. Geyer Detective Agency, Inc., 130 So.2d 882, 884 (Fla. 1961)].

Thus, it is commonly understood that a “willful violation of law” is an act of purposefulness. As the First District Court of Appeal stated, relying on Black’s Law Dictionary:

An act or omission is ‘willfully’ done, if done voluntarily and intentionally and within the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

Metropolitan Dade County v. State Department of Environmental Protection, 714 So.2d 512, 517 (Fla. 1st DCA 1998)[emphasis added]. In other words, a willful violation of a statute, rule or order is also one done with an intentional disregard of, or a plain indifference to, the applicable statute or regulation. See, L. R. Willson & Sons, Inc. v. Donovan, 685 F.2d 664, 667 n.1 (D.C. Cir. 1982).

Thus, the failure of New Century to comply with Rule 25-4.118, F.A.C., meets the standard for a “willful violation” as contemplated by the Legislature when enacting section 364.285, Florida Statutes. “It is a common maxim, familiar to all minds, that ‘ignorance of the law’ will not excuse any person, either civilly or criminally.” Barlow v. United States, 32 U.S. 404, 411 (1833); see, Perez v. Marti, 770 So.2d 284, 289 (Fla. 3rd DCA 2000) (ignorance of the law is never a defense). Moreover, in the context of this docket, all intrastate interexchange telecommunication companies, like New Century, are subject to the rules published in the Florida Administrative Code. See, Commercial Ventures, Inc. v. Beard, 595 So.2d 47, 48 (Fla. 1992).

Staff believes that New Century’s settlement proposal is incongruous, due to the egregious nature of New Century’s marketing tactics, the apparent fact that the company provided false information to the Commission in response to slamming complaints, and the company’s apparent connection to other companies previously involved in slamming. Therefore, staff recommends that the Commission should not accept the company’s settlement offer and find that New Century has, by its actions, willfully violated Rule 25-4.118, F.A.C., and impose upon the company a penalty in the amount of \$420,000 to be paid to the Florida Public Service Commission. The amount of the proposed penalty is consistent with penalties previously imposed by the Commission upon other IXCs that were found to be slamming Florida subscribers. The Commission is vested with jurisdiction over this matter pursuant to Sections 364.02(13), 364.04, 364.285 and 364.603, Florida Statutes. Accordingly, staff believes its recommendation is appropriate.

Issue 2: If, as a result of the Commission's Order resulting from this recommendation, New Century Telecom, Inc. is ordered to cease and desist providing intrastate interexchange telecommunications services in Florida, should the Commission also order any company that is providing billing services or underlying carrier services for New Century Telecom, Inc. to stop providing service for it in Florida?

Recommendation: Yes. (Buys, L. Fordham, Rojas, Teitzman)

Staff Analysis: Due to the egregious nature of New Century's business practices and alleged violations addressed in this recommendation, staff believes that additional measures may be necessary to prevent further improper conduct in the event New Century is required to cease and desist providing interexchange service in Florida. Therefore, staff recommends that the Commission also direct all companies that are providing billing services or underlying carrier services for New Century to stop providing those services for said company if it is ultimately required to cease and desist providing interexchange services in Florida. Staff believes this additional action is warranted, because it appears that any ability New Century has to continue billing through another company and providing resold services through an underlying carrier may serve as incentive to the company to continue operating in violation of a Commission Order to the detriment of Florida consumers.

Pursuant to Section 364.604(2), Florida Statutes, a customer shall not be liable for any charges to telecommunications or information services that the customer did not order or that were not provided to the customer. Clearly, if New Century is ordered to cease and desist providing interexchange telecommunications services in Florida, customers will no longer be ordering services from said company. Thus, any bills sent to a Florida customer for interexchange services provided by New Century would inherently be for services that were either not ordered or could not be provided. All telecommunications companies in Florida, as well as intrastate interexchange companies (IXCs), are subject to the statutory provision. As such, staff believes that the Commission is authorized to take this action.

Likewise, Rule 25-24.4701, Florida Administrative Code, prohibits registered IXCs from providing telecommunications services to unregistered resellers. In the event New Century is required to cease and desist providing interexchange service in Florida, then registered IXCs are no longer authorized to provide telecommunications services to New Century for resale in Florida.

In addition, staff believes that the Commission has the authority to take this additional action, because any company that continues to bill for or provide underlying carrier services to the penalized company will, in effect, be contributing to the ongoing violations of the company. Ultimately, the billing company and underlying carrier will be aiding and abetting in either a "slam" in violation of Section 364.603, Florida Statutes, or an improper billing in violation of Section 364.604, Florida Statutes. All telecommunications companies, as well as IXCs, are subject to these statutes.

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Issue 3: Should this docket be closed?

Recommendation: Staff recommends that the Commission take action as set forth in the following Staff Analysis. **(L. Fordham, Rojas, Teitzman)**

Staff Analysis: The Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If New Century fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If New Century fails to pay the penalty within fourteen (14) calendar days after issuance of the Consummating Order, the company's tariff should be cancelled and Registration No. TI427 should be removed from the register. If New Century's tariff is cancelled and Registration No. TI427 is removed from the register in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing interexchange telecommunications services in Florida. This docket should be closed administratively upon either receipt of the payment of the penalty or upon the removal of the company's registration number from the register and cancellation of the company's tariff. If New Century subsequently decides to reapply for registration as an intrastate interexchange company, it should be required to first pay any outstanding penalties assessed by the Commission. Any action by the Commission, including but not limited to any settlement, should not preempt, preclude, or resolve any matters under review by any other Florida Agencies or Departments.

Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection.

(1) The provider of a customer shall not be changed without the customer's authorization. The customer or other authorized person may change the residential service. For the purposes of this section, the term "other authorized person" shall mean a person 18 years of age or older within the same household. The person designated as the contact for the local telecommunications company, an officer of the company, or the owner of the company is the person authorized to change business service. A LEC shall accept a provider change request by telephone call or letter directly from its customers; or

(2) A LEC shall accept a change request from a certified LP or IXC acting on behalf of the customer. A certificated LP or IXC shall submit a change request only if it has first certified to the LEC that at least one of the following actions has occurred:

(a) The provider has a letter of agency (LOA), as described in subsection (3), from the customer requesting the change;

(b) The provider has received a customer-initiated call, and beginning six months after the effective date of this rule has obtained the following:

1. The information set forth in subparagraphs (3)(a)1. through 5.; and
2. Verification data including at least one of the following:
 - a. The customer's date of birth;
 - b. The last four digits of the customer's social security number; or
 - c. The customer's mother's maiden name.

(c) A firm that is independent and unaffiliated with the provider claiming the subscriber has verified the customer's requested change by obtaining the following:

1. The customer's consent to record the requested change or the customer has been notified that the call will be recorded; and
2. Beginning six months after the effective date of this rule an audio recording of the information stated in subparagraphs (3)(a)1. through 5.; or

(d) 1. **The provider has received a customer's change request**, and has responded by mailing an informational package that shall include the following:

- a. A notice that the information is being sent to confirm that a customer's request to change the customer's telecommunications provider was obtained;
- b. A description of any terms, conditions, or charges that will be incurred;
- c. The name, address, and telephone number of both the customer and the soliciting company;
- d. A postcard which the customer can use to confirm a change request;
- e. A clear statement that the customer's local, local toll, or toll provider will be changed to the soliciting company only if the customer signs and returns the postcard confirming the change; and
- f. A notice that the customer may contact by writing the Commission's Division of Consumer Affairs, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, or by calling, toll-free (TDD & Voice) 1 (800) 342-3552, for consumer complaints.

2. The soliciting company shall submit the change request to the LP only if it has first received the postcard that must be signed by the customer.

(3) (a) The LOA submitted to the company requesting a provider change shall include the following information (Each shall be separately stated):

1. Customer's billing name, address, and each telephone number to be changed;
2. Statement clearly identifying the certificated name of the provider and the service to which the customer wishes to subscribe, whether or not it uses the facilities of another company;
3. Statement that the person requesting the change is authorized to request the change;
4. Statement that the customer's change request will apply only to 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;
5. Statement that the LEC may charge a fee for each provider change;
6. Customer's signature and a statement that the customer's signature or endorsement on the document will result in a change of the customer's provider.

(b) The soliciting company's provider change fee statement, as described in subparagraph (a)5. above, shall be legible, printed in boldface at least as large as any other text on the page, and located directly above the signature line.

(c) The soliciting company's provider change statement, as described in subparagraph (a)6. above, shall be legible, printed in boldface at least as large as any other text on the page, and located directly below the signature line.

(4) The LOA shall not be combined with inducements of any kind on the same document. The document as a whole must not be misleading or deceptive. For purposes of this rule, the terms "misleading or deceptive" mean that, because of the style, format or content of the document or oral statements, it would not be readily apparent to the person signing the document or providing oral authorization that the purpose of the signature or the oral authorization was to authorize a provider change, or it would be unclear to the customer who the new provider would be; that the customer's selection would apply only to the number listed and there could only be one long distance service provider for that number; or that the customer's LP might charge a fee to switch service providers. If any part of the LOA is written in a language other than English, then it must contain all relevant information in each language. Notwithstanding the above, the LOA may be combined with checks that contain only the required LOA language as prescribed in subsection (3) of this section and the information necessary to make the check a negotiable instrument. The LOA check shall not contain any promotional language or material. The LOA check shall contain in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary carrier change by signing the check. The LOA language shall be paced near the signature line on the back of the check.

(5) A prospective provider must have received the signed LOA before initiating the change.

(6) Information obtained under paragraphs (2)(a) through (d) shall be maintained by the provider for a period of one year.

(7) Customer requests for other services, such as travel card service, do not constitute a provider change.

(8) Charges for unauthorized provider changes and all 1+ charges billed on behalf of the unauthorized provider for the first 30 days or first billing cycle, whichever is longer, shall be credited to the customer by the company responsible for the error within 45 days of notification to the company by the customer, unless the claim is false. After the first 30 days up to 12 months, all 1+ charges over the rates of the preferred company will be credited to the customer by the company responsible for the error within 45 days of notification to the company by the customer, unless the claim is false. Upon notice from the customer of an unauthorized provider change, the LEC shall change the customer back, or to another company of the customer's choice. The change must be made within 24 hours excepting Saturday, Sunday, and holidays, in which case the change shall be made by the end of the next business day. The provisions of this subsection apply whether or not the change is deemed to be an authorized carrier change infraction under subsection (13).

(9) The company shall provide the following disclosures when soliciting a change in service from a customer:

- (a) Identification of the company;
- (b) That the purpose of the visit or call is to solicit a change of the provider of the customer;
- (c) That the provider shall not be changed unless the customer authorizes the change; and
- (d) All information as referenced in subsection 25-24.490(3), Florida Administrative Code

(10) During telemarketing and verification, no misleading or deceptive references shall be made while soliciting for subscribers.

(11) A provider must provide the customer a copy of the authorization it relies upon in submitting the change request within 15 calendar days of request.

(12) Each provider shall maintain a toll-free number for accepting complaints regarding unauthorized provider changes, which may be separate from its other customer service numbers, and must be answered 24 hours a day, seven days a week. If the number is a separate toll-free number, beginning six months after the effective date of this rule new customers must be notified of the number in the information package provided to new customers or on their first bill. The number shall provide a live operator or shall record end user complaints made to the customer service number to answer incoming calls. A combination of live operators and recorders may be used. If a recorder is used, the company shall attempt to contact each complainant no later than the next business day following the date of recording and for three subsequent days unless the customer is reached. If the customer is not reached, the company shall send a letter to the customer's billing address informing the customer as to the best time the customer should call or provide an address to which correspondence should be sent to the company. Beginning six months after the effective date of this rule, a minimum of 95 percent of all call attempts shall be transferred by the system to a live attendant or recording device prepared to give immediate assistance within 60 seconds after the last digit of the telephone number listed as the customer service number for unauthorized provider change complaints was dialed; provided that if the call is completed within 15 seconds to an interactive, menu-driven, voice response unit, the 60-

second answer time shall be measured from the point at which the customer selects a menu option to be connected to a live attendant. Station busies will not be counted as completed calls. The term “answer” as used in this subsection means more than an acknowledgment that the customer is waiting on the line. It shall mean the provider is ready to render assistance or accept the information necessary to process the call.

(13) (a) A company shall not be deemed to have committed an unauthorized carrier change infraction if the company, including its agents and contractors, did the following:

1. Followed the procedures required under subsection (2) with respect to the person requesting the change;
2. Followed these procedures in good faith; and
3. Complied with the credit procedures of subsection (8).

(b) In determining whether fines or other remedies are appropriate for an unauthorized carrier change infraction, the Commission shall consider the actions taken by the company to mitigate or undo the effects of the unauthorized change. These actions include but are not limited to whether the company, including its agents and contractors:

1. Followed the procedures required under subsection (2) with respect to the person requesting the change in good faith;
2. Complied with the credit procedures of subsection (8);
3. Took prompt action in response to the unauthorized change;
4. Reported to the Commission any unusual circumstances that might have adversely affected customers such as system errors or inappropriate marketing practices that resulted in unauthorized changes and the remedial action taken;
5. Reported any unauthorized provider changes concurrently affecting a large number of customers; or
6. Took other corrective action to remedy the unauthorized change appropriate under the circumstances.

Specific Authority 350.127(2) FS. Law Implemented 364.01, 364.19, 364.285, 364.603 FS. History—New 3-4-92, Amended 5-31-95, 12-28-98.

(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

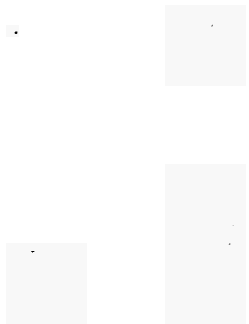
- The percentage of apparent infractions committed by NCT, as compared to the total number of apparent slamming infractions in Florida since July 1999, is nominal. NCT's 42 alleged apparent infractions constitute less than 3.5% of the infractions attributable to the 9 companies mentioned in the PAA since 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.

Date: June 17, 2004

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.

The Consortium

During its investigation of the companies named below, staff obtained various documents and information that suggest some of the companies may be linked through financial, managerial, and operational associations. All of the companies are switchless re-sellers of intrastate interexchange company (IXC) telecommunications service and have been or are currently under investigation by staff for slamming.

Miko Telephone Communications, Inc. (Miko), Ms. Margaret Currie, President: Miko's IXC registration and tariff became effective on September 26, 2001, and is still current.

New Century Telecom, Inc. (New Century), Ms. Karyn Bartel, President: New Century's IXC registration and tariff became effective on March 20, 1996, and is still current.

Optical Telephone Corporation (Optical), Mr. Mark Frost, President: Optical's IXC registration and tariff became effective on September 14, 2001, and is still current.

UKI Communications, Inc (UKI) Mr. Guiseppe Vitale, President: UKI's IXC registration and tariff was cancelled by the Commission effective December 1, 2003, in Docket No. 020645-TI (Order No. PSC-03-0990-PAA-TI).

America's Tele-Network Corp. (ATN), Mr. John W. Little, President: ATN's IXC registration and tariff and CLEC certificate were involuntarily cancelled by the Commission as part of a settlement offer to resolve the company's apparent slamming violations in Docket Nos. 001066-TI and 001813-TX (Order No. PSC-01-1035-AS-TP, issued April 27, 2001).

WebNet Communications, Inc. (WebNet), Mr. Marc Howard Lewis, President: WebNet's IXC registration and tariff was involuntarily cancelled by the Commission, effective February 8, 2002, as part of a settlement to resolve the company's apparent slamming violations in Docket No. 001109-TI (Order No. PSC-01-2432-PAA-TI, issued December 13, 2001).

World Communications Satellite Systems, Inc. (WCSS), Ms. Caterina Bergeron, President: WCSS's IXC registration and tariff became effective on October 8, 2001, and is still current.

America's Digital Satellite Telephone, Inc. (ADST), Mr. Damian Cipriani, President: ADST requested voluntary cancellation of its IXC registration and tariff in a letter addressed to the Commission dated December 15, 2003. In Docket No. 040298-TI, the company's cancellation request was acknowledged on April 5, 2004, and the company's IXC registration was cancelled with an effective date of December 16, 2003.

OLS, Inc. (OLS), Ms. Geri Eubanks (formerly Buffa, then Clary), President: OLS's IXC registration and tariff became effective on October 7, 1997, and is still current.

Slamming History

ATN - In Docket No. 001066-TI, staff filed a recommendation on September 14, 2000, for the Commission to order ATN to show cause why it should not be fined for apparent slamming violations alleged by consumers. The company requested that the item be deferred from the Agenda Conference and eventually proffered a settlement. Between March 7, 1996, and March 7, 2001, the Commission received 299 slamming complaints from Florida consumers. The majority of all 299 apparent infractions were for the failure of the company to provide the required documentation to prove that the interexchange carrier change was authorized. At least sixty-one (61) complainants reported they were never contacted by an ATN representative and discovered they had been slammed when they reviewed their telephone bill. ATN could not produce an LOA or TPV recording to confirm any contact with the 61 customers. Moreover, twelve of the complainants reported that a telemarketer misled them into believing they were talking to an AT&T representative about AT&T services, when in fact they were being solicited by ATN. ATN settled the docket by resolving all customer complaints, surrendering its certificate and discontinuing operations in Florida.

WebNet - In Docket No. 001109-TI staff filed a recommendation on September 14, 2000 for the Commission to order WebNet to show cause why it should not be fined for thirty-two (32) apparent slamming violations. Between April 21, 2000, and August 21, 2000, the Commission received forty-five (45) slamming complaints from Florida consumers claiming they were slammed by WebNet. Staff determined that 32 of those complaints were apparent slamming infractions. The majority of the complaints against WebNet are considered to be slamming infractions because the company either failed to provide proof that the customer authorized the carrier change or the TPV provided to the Commission did not meet the requirements set forth in the Rule 25-4.118, F.A.C.

OLS - In Docket No. 010245-TI, staff filed a recommendation on March 21, 2001, for the Commission to order OLS to show cause why it should not be fined for forty-nine (49) apparent slamming violations. All of the violations resulted from OLS's failure to provide the appropriate documentation to prove that the service provider changes were authorized. In these cases, OLS used telemarketers to solicit its services and recorded the verification process as proof of the customer's authorization for OLS to change providers. The copies of the recorded verification process that OLS sent to the Commission's staff did not contain the necessary information for verification and/or authorization as required by the Commission's slamming rule. . A significant number of the fifty complainants reported that the telemarketers who called them misrepresented themselves as Verizon representatives. After talking to some of the complainants and reviewing the cases, staff learned that OLS telemarketers apparently used several fraudulent approaches to persuade consumers to change providers to OLS and go through its verification process. First, the telemarketer allegedly told the consumer that due to Verizon's merger with GTE, they would not have a long distance carrier and needed to choose a new one. Second, the telemarketer allegedly told the consumer that they were with Verizon and needed to verify the customer's information as a result of merging with GTE. OLS resolved the slamming issues by discontinuing marketing in Florida for six months and making a voluntary contribution to the General Revenue Fund in the amount of \$51,000.

ADST - Between January 24, 2002, and July 16, 2003, the Commission received seventy-eight (78) slamming complaints against ADST. Staff determined that sixty-nine (69) of those complaints appear to be slamming infractions. The Commission has not received any complaints against ADST since July 16, 2003, therefore, a docket was not opened and staff is currently monitoring the company for additional complaints. In most of the complaints, the customers state that they had no contact with any representatives from ADST, and only became aware that ADST was their long distance carrier when they reviewed their local telephone bills, similar to complaints filed against ATN. The most common complaint was that after apparently slamming the customers' service, ADST would not credit the customers' accounts after an ADST representative indicated to the customer that the company would issue a credit. In some cases the customers continued to be billed for six months without receiving credit.

WCSS - From December 19, 2001, through August 15, 2003, the Commission received eighty-one (81) slamming complaints from Florida consumers, sixty-six (66) of which were determined by staff to be apparent slamming infractions. From October 4, 2002, through December 4, 2002, staff corresponded with WCSS and the company's legal counsel to address the alleged slamming. The majority of the complaints were considered to be slamming infractions because the company either failed to provide proof that the customer authorized the carrier change or the TPV provided to the Commission did not meet the requirements set forth in the slamming rule. Like ADST, WCSS failed to credit the customers' accounts as indicated in its resolution to the slamming complaints. In several cases, the customers filed additional complaints claiming WCSS did not credit their accounts as promised. WCSS then issued the complaining customer a refund check to resolve the ensuing complaint. Staff is currently monitoring WCSS for additional complaints; the most recent new slamming complaint was received August 15, 2003.

UKI - From January 1, 2001, to July 28, 2003, the Commission received 319 slamming complaints against UKI. Staff determined that 203 of the 319 slamming complaints received by the Commission appear to be violations of Rule 25-4.118, F.A.C. On July 29, 2003, UKI submitted its proposal to settle Docket No. 020645-TI, and on September 30, 2003, the Commission issued Consummating Order No. PSC-03-1078-CO-TI, making PAA Order No. PSC-03-0990-PAA-TI, final and effective. However on January 28, 2004, staff determined that UKI did not comply with any of the terms of its settlement offer and Order No. PSC-03-1078-CO-TI. Subsequently, on February 2, 2004, UKI attempted to effect a voluntary cancellation of its registration by submitting an unsigned request to cancel its "Certificate of Authority to transact business in the state of Florida." The company's failure to comply with its settlement offer and resolve the apparent slamming infractions is still being addressed by staff in Docket No. 020645-TI.

Miko - From July 31, 2002, through October 31, 2003, the Commission received a total of 159 slamming complaints against Miko. Staff determined that 154 of the slamming complaints are apparent slamming violations because the company failed to comply with the specific verification methodologies required by the Commission's slamming rules and the egregious nature of the company's telemarketing. Staff is addressing Miko's apparent slamming infractions in Docket No. 031031-TI. No one from the company has recently contacted staff regarding the docket.

New Century - From August 26, 2003, through March 23, 2004, the Commission received fifty-four (54) slamming complaints against New Century Telecom, Inc. (New Century) from Florida consumers. Staff determined that forty-two (42) of the slamming complaints appear to be violations of Rule 25-4.118, F.A.C., because the company failed to comply with the specific verification methodologies required by the Commission's slamming rules and the apparent egregious nature of the marketing utilized by the company.

Financial Connection

On February 19, 2003, Commission staff sent a Subpoena Duces Tecum to Intellicall Operator Services, Inc. d/b/a ILD (ILD) seeking information regarding links between the companies. ILD responded in March 2003, and provided staff with a copy of a cross-corporate guarantee and other documents that show the following relationships:

- WebNet, UKI, ADST, WCSS, and Miko are affiliates of ATN.
- WebNet, ADST, WCSS, Miko, ATN, and New Century are parties to a cross-corporate guarantee with each another. UKI is listed on the agreement but it was not signed by a UKI representative.
- The address to which ILD remits payment to Miko, WCSS and Optical is not the companies' respective corporate addresses, but the corporate address of ATN; 720 Hembree Place, Roswell, Georgia, 30076.

The cross-corporate guarantee is a financial agreement executed by WebNet, ADST, WCSS, Miko, ATN, and New Century in December 2002. In the agreement, each company unconditionally guaranteed to ILD the prompt repayment of advances and discharge when due of each and all obligations and indebtedness of the companies for advances and/or services supplied by ILD. Simply, each company promised to pay the debts owed to ILD by any of the other companies included in the agreement. Hence, it appears that WebNet, ADST, WCSS, Miko, ATN, and New Century are connected financially by sharing expenses through the cross corporate guarantee agreement with ILD.

Managerial Connection

UKI and New Century - In its response to staff's Subpoena Duces Tecum, ILD provided other documents that suggest additional associations between the companies. The 1+ Billing and Collections Agreement, made on May 19, 2000, between UKI and ILD, appears to list Karyn Bartel as UKI's contact person to receive notices in connection with the agreement. Thus, it seems reasonable to assume that Karyn Bartel was associated with UKI in some management capacity before becoming president of New Century.

Miko, Optical, and WCSS - Miko, Optical, and WCSS each sent a letter, dated January 22, 2003, to ILD requesting to cancel the cross-corporate financial guarantee agreement between each of the companies and UKI. Each of the letters appears to have been signed by the companies' respective presidents. The letters are identical except for the letterhead. Staff

believes the letters demonstrate the companies may share the same management because the letters were created using the same language, format, and date.

UKI and WCSS - In UKI's application for Approval to Offer, Render, Furnish, or Supply Telecommunications Services as a Reseller of Services to the Public in the State of Arkansas, Caterina Bergeron appears to have signed as the official administering the oath for the Verification of Giuseppe Vitale affirming he is the president of UKI, and is dated November 19, 1999. In addition, Caterina Bergeron appears to have signed as the notary on UKI's Articles of Incorporation in the State of Nevada, dated August 4, 1999. Staff believes the documents suggest that Caterina Bergeron was affiliated in some capacity with UKI.

WebNet and WCSS - Marc Lewis, president of WebNet, appears to have signed as endorser for Caterina Bergeron's character in an application for Notary Public Commission in Fulton County, Georgia, submitted by Caterina Bergeron. The business address listed for Caterina Bergeron is 720 Hembree Place, Roswell, Georgia; ATN's address. The document was signed February 4, 1997. Staff believes that this document suggests that the president of WebNet, Marc Lewis, and the president of WCSS, Caterina Bergeron, are associates, and that Caterina Bergeron's place of business during that time was that of ATN.

UKI and Optical - Mark Frost, president of Optical, included his resume in Optical's application for an IXC certificate submitted to the Commission on May 30, 2001. His resume stated that from 1999 to present, he was in charge of maintaining and updating records for customer service at UKI. Optical has indicated to staff the Mr. Frost resigned from UKI once Optical was operating and providing service.

Optical and WCSS - Caterina Bergeron, president of WCSS, appears to have notarized Optical's Application for a Certificate of Public Convenience and Necessity to Offer Long Distance Telecommunications Service by a Reseller in North Carolina. The application was signed by Marc Frost and dated June 26, 2001. WCSS was incorporated in the State of Virginia on April 13, 2000, hence, a reasonable person would not expect the president of WCSS to be involved in the application process of its apparent competitor. Optical has indicated to staff that Caterina Bergeron was never involved with Optical and that Ms. Bergeron's notary on Optical's documents was simply a matter of convenience as both Marc Frost and Ms. Bergeron were working in the same building and Ms Bergeron had just started her company, WCSS.

WCSS and ADST - Caterina Bergeron appears to have signed as the official administering the oath for the Verification of Damian Cipriani affirming he is the president of ADST, dated June 27, 2001 in ADST's application for Approval to Offer, Render, Furnish, or Supply Telecommunications Services as a Reseller of Services to the Public in the State of Arkansas. Also included in the application is a copy of the Articles of Incorporation for ADST in the State of Nevada. Damian Cipriani appears to be listed as the Director, Rodney Harrison appears to be listed as the Incorporator, and Caterina Bergeron appears to be listed as the Notary. The document is dated February 3, 2000. Staff believes that these documents suggest that Damian Cipriani, Caterina Bergeron, and Rodney Harrison were associates as early as February 3, 2000.

FVC - Rodney Harrison is the sole owner of Federal Verification Corporation, Inc. (FVC) located at 230 Judson Way, Alpharetta, Georgia, 30022. FVC was incorporated in Georgia on February 16, 2001. FVC was utilized by Miko, ADST, UKI, and Optical to perform third party verifications (TPVs) for carrier changes executed by the companies. Rodney Harrison appears to have notarized Miko's Application for a Certificate of Public Convenience and Necessity to Offer Long Distance Telecommunications Service by a Reseller in North Carolina. The application was signed by Margaret Currie and dated July 9, 2001. Also, Rodney A. Harrison appears to be listed as the Custodian of Accounting Records for UKI in Attachment B. Rodney Harrison appears to have also notarized documents in Fulton County, Georgia for ADST, and Optical. Hence, it appears that Rodney Harrison and FVC are affiliated in some capacity with UKI, Miko, ADST, and Optical.

ATN, WCSS, and FVC - John W. Little, former president of ATN, appear to have signed as endorser for Rodney Harrison's character in an application for Notary Public Commission in Fulton County, Georgia, submitted by Rodney Harrison. Caterina Bergeron appears to have signed as the Notary affirming Rodney Harrison's signature. The document is dated March 2, 2001. Staff believes this document suggests that the presidents of ATN, WCSS, and FVC may be business associates.

In addition, according to the Amended Verified Complaint of C. David Butler, Chapter 7 Trustee for Sonic, filed on October 8, 1996, in United States Bankruptcy Court for The Northern District of Georgia, Atlanta Division, Caterina Bergeron, Geri Buffa Clary, Damian Cipriani, and Marc H. Lewis, were employed by Sonic Communications, Inc. (Sonic). Staff believes this is significant because it suggests that these four individuals worked together at Sonic. On page 28 of his complaint, Mr. Butler claims the following:

- One week after the Original Defendants (of which Caterina Bergeron, Geri Buffa Clary, Damian Cipriani, and Marc H. Lewis were included) filed their answer to the Trustee's Complaint, ATN was incorporated.
- ATN's president is John W. Little, former Sonic employee and Buffa family member, and upon information and belief, ATN is in the telecommunications business and received at least \$335,000 originating from Sonic to begin its operations and that, most, if not all, of ATN's employees are related to John S. Buffa, former president and majority shareholder of Sonic.
- Cathy (Caterina) Bergeron, Damian Cipriani, Geri Clary, and Marc Lewis are among those former Sonic employees who received payments from ATN as employees or independent contractors.

Based on the aforementioned, staff has reason to suspect that ATN, WebNet, WCSS, ADST, Optical, Miko, and New Century may be managed collectively by the same individuals, and that those same individuals appear to have been business associates in the past at Sonic, ATN, and UKI. As discussed in the Slamming History, each of these companies was apparently involved in egregious slamming activity in Florida.

Operational Connection

Based on information contained in various slamming complaints from Florida consumers, it appears that WCSS, Optical, Miko, and UKI may share the same operational support system and/or billing system. Customers have received charges for direct dialed calls on their local phone bills from two companies simultaneously even though only one of them is the presubscribed carrier.

Miko and WCSS - In a slamming complaint filed by Rita Dunayew, Request No. 512643T, she states that she received a solicitation from WCSS and agreed to use it as her long distance provider. Upon receiving her bill, she was confused as to who was the service provider; Global Crossings was listed as her service provider, but she was told by Global Crossings that Miko was the company responsible for the customer's account. Ultimately, it was determined that Miko was the customer's long distance service provider, not WCSS. Hence, it appears that WCSS marketed its services to the customer, but Miko was the actual service provider. Staff believes that this suggests Miko and WCSS may be sharing customers, are one in the same company, or share operational support systems.

UKI and Optical - In a slamming complaint filed by Antonio Coro against Optical, Request No. 511708, Mr. Coro provided staff with a bill for his local service that included charges from both UKI and Optical. The complaint proved to be an apparent slamming infraction and Optical credited all the charges. Optical was the presubscribed carrier, but UKI included charges for a Universal Service Fee and a monthly fee on the customer's bill in addition to the charges from Optical.

Miko and Optical - In slamming complaints filed by Librada Barrero against Miko and Optical, Request Nos. 538563T and 538658T, respectively, Ms. Barrero reported she was billed by both Miko and Optical. In another apparent cross-billing instance, Robert Marco also filed slamming complaints against Miko and Optical, Request Nos. 544466T and 544491T, respectively. Both Ms. Barrero and Mr. Marco provided staff with copies of bills for their local service that included charges from both Miko and Optical. The disputed charges were for direct dialed calls made in April 2003 through Optical's service even though both were switched to Miko. In its response to the complaints, Miko reported that it was responsible for the carrier change although Optical also billed the customer for direct dialed calls during the time Miko was the presubscribed service provider. In the Marco case, Miko credited the customer for most of the charges, apparently including the charges from Optical.

Telemarketing Similarities

Slamming complaints received against the companies reference similar telemarketing tactics which appear to be misleading and confusing to the consumers. All of the companies utilize telemarketing to solicit their services. The companies still operating and telemarketing (WCSS, Miko, Optical, and New Century) appear to employ a variety of sales pitches to persuade consumers to provide their personal information and state "yes" to a question. The recorded information and statements are allegedly used to create a third party verification (TPV) tape that the companies use as authorization to switch the customers' long distance service. These sales tactics involve the solicitation of a free long distance calling card, offering customers a promotional check, offering to send the customer information about the company's services and rates, or supposedly conducting a survey regarding long distance service or telephone companies.

UKI - In a slamming complaint filed against UKI by Mr. Jose A. Abin, Request No. 420514T, Mr. Abin states in his letter dated November 19, 2001, that a telemarketer called his wife and informed her that she was the winner of a free long distance calling card. Mr. Abin states that the telemarketer instructed his wife to say "yes" or "no" at the sound of the tone and she provided her date of birth and address. Mr. Abin claims that at no time during the call did the telemarketer indicate that their long distance service provider would be changed.

Optical - In a slamming complaint filed against Optical by Mr. Jaime R. Quinones, Request No. 446088T, Mr. Quinones states that he received a call from "The Telephone Company" and was offered a free 1500 minute calling card from the telemarketer. Mr. Quinones states that he was instructed to answer the questions that were similar to, "would you like 1500 free minutes for trying our service," and "are you authorized to make decisions about your phone service?" Mr. Quinones responded "yes" to both of the questions, then provided his name, address, and date of birth. Mr. Quinones states that, "Nothing was ever mentioned that I would be changing my long distance carrier. They offered me a calling card I never got; instead, they switch[ed] my long distance company."

WCSS - In complaints filed against WCSS, some customers claim that a telemarketer offered to mail the customers a promotional check and a form to switch service. The customers provided their name and address and mother's maiden name or date of birth to receive the information. However, the customers claim they never received the check or form, but their long distance service was switched to WCSS.

- In the complaint by Joseph Scherf, Sr., Request No. 483607T, Mr. Scherf states that he received a call from a company supposedly doing a survey, and when he listened to the TPV tape played by WCSS, he claimed the questions on the tape are not the same as the questions asked of him during the survey.
- In a complaint filed by Jose Luis Campos, Request No. 510342T, Mr. Campos states that he did not authorize WCSS to switch his long distance service, and he only provided his personal information in order to receive a free calling card.

ADST - In slamming complaints filed against ADST, some customers reported instances of misleading telemarketing.

- In Request No. 486325T, Mr. Terrence Griffiths states in a hand written note to staff, “We did not authorize the [carrier] change – the survey questions asked were not what is heard on the [TPV] tape. The responses appear to be dubbed in.”
- In Request No. 489731T, Mark Holland states that a telemarketer called indicating that he was from Sprint and that he was due a refund for overcharges; on his next bill, Mr. Holland’s long distance service was switched to ADST. Mr. Holland states that he tried to resolve the matter with ADST and ILD, but both companies were rude and would hang up.
- In Request No. 538170T, Melissa Fritsch claims that she agreed to switch to ADST in June 2002, but did not receive the rates promised in the telemarketing call and switched back to MCI in November 2002. Ms. Fritsch reported that in April 2003, her long distance service was again switched by ADST. She contacted ADST and was informed that she authorized the carrier change on April 18, 2003. Ms. Fritsch states that the ADST representative played the TPV of her verification in June 2002. The company never provided a TPV for the carrier change that allegedly occurred on April 18, 2003.

Miko – Miko markets its services to Florida consumers through telemarketers who apparently employ a variety of sales pitches to persuade the customers to provide their name, address, telephone number, and date of birth or mother’s maiden name. Some of Miko’s sales tactics involve soliciting a free long distance calling card to try Miko’s service without any obligation, offering customers a promotional check, or conducting a survey regarding long distance service or telephone companies. After reviewing the complaints, staff found no evidence that Miko’s telemarketers advised the customers that the purpose of the call was to solicit a change of long distance service provider and it appears that Miko’s telemarketers made misleading and deceptive references during telemarketing and verification while soliciting for subscribers. Moreover, it appears that Miko’s verification processes are misleading and fraudulent in nature. In many of the complaints, the customers claim that Miko altered the TPV recording to make it appear that they authorized the carrier change.

New Century – New Century’s telemarketing is very similar to Miko’s and is discussed in detail in Issue 1 of staff’s recommendation.

Aggregate Affects

Staff believes that the group of companies functions in the following manner. The first company, ATN, began to engage in aggressive and sometimes misleading telemarketing tactics to enlist a large number of customers and generate cash flow from ILD. Consequently, the PSC received a large number of slamming complaints. Once the PSC began enforcement proceedings, ATN apparently ceased the activities that were causing the slamming complaints. However, WebNet began to engage in similar telemarketing activities, and thus, the slamming complaints against Webnet began to increase. Again, once staff initiated enforcement proceedings against WebNet, the complaints against Webnet declined. Subsequently, the slamming complaints against OLS increased about the same time the complaints against WebNet decreased, suggesting that OLS increased its telemarketing activities. This pattern is repeated with UKI, Optical, UKI again, ADST, WCSS, Miko, and finally New Century. It appears that each company, once notified by staff that it is under investigation, stops or minimizes telemarketing in Florida to reduce the number of complaints, but another company assumes the same telemarketing tactics practiced by the preceding company. None of the companies, OLS excluded, appear to have changed their telemarketing and verification processes to comply with the Commission's slamming rule. Collectively, the companies appear to sustain the misleading telemarketing activities by transferring operations to a new company so as to give the appearance that the company under investigation has corrected the problems causing the apparent slamming infractions. Staff created Chart 1 on page 41 to illustrate this cycle.

According to the Commission's Unauthorized Carrier Change Complaints Report, since July 1, 1999, 174 different companies providing service in Florida have committed at least one apparent slamming infraction. The nine companies discussed herein are responsible for one-third (1,255) of all the apparent slamming infractions stemming from consumer complaints the Commission received since July 1, 1999. Chart 2 on page 41 shows the number of complaints received from all nine companies combined.

In summary, it appears that the individuals and companies named in this recommendation have perpetuated a history of slamming activity in Florida. Those individuals and companies appear to have been employed by or contracted their services to Sonic, then ATN, thereafter, they established their own corporations: WCSS, ADST, WebNet, and UKI. Once these companies began to attract the interest of the FCC and state regulatory agencies, the operations of the companies apparently were transferred to Optical, Miko, and New Century. Staff believes that the companies' intent is to enlist as many customers as possible through aggressive telemarketing tactics so as to generate cash flow from billing the customers through ILD. By delaying the credits due to the complainants for as long as possible, the companies are able to maintain a positive cash flow without actually providing service to customers on an ongoing basis.

Chart 1 The Consortium Slamming Infractions Time Progression

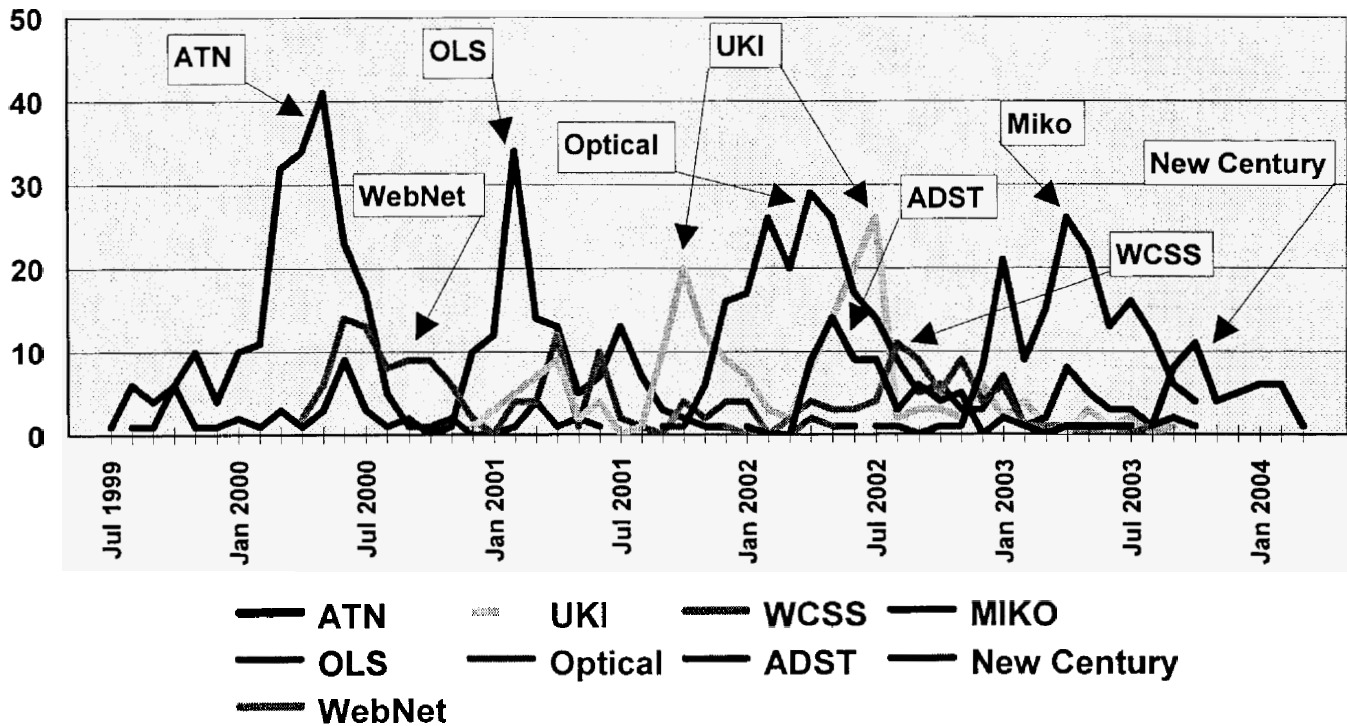
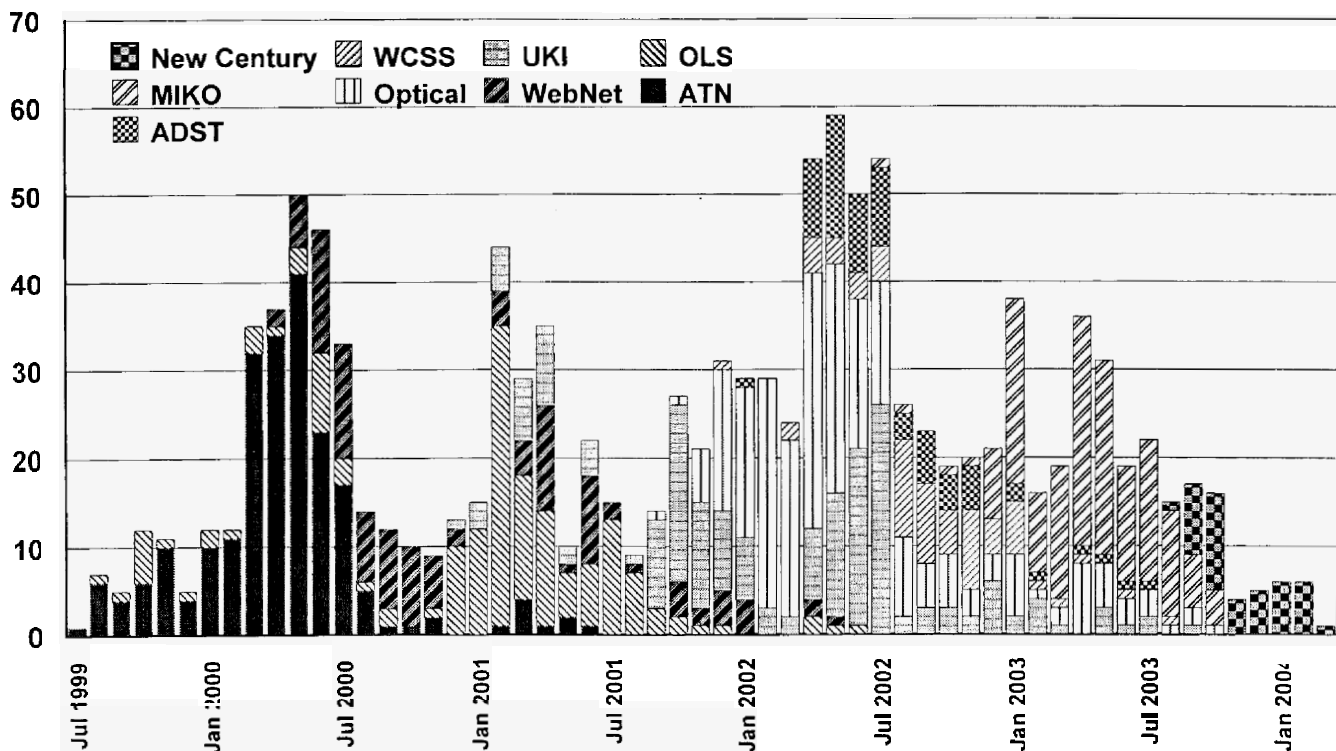


Chart 2 The Consortium Aggregate Slamming Infractions



**COMPLAINTS FOR WHICH NEW CENTURY FAILED
TO PROVIDE A TPV**

	CATS No.	Customer Name	BTN
1	561034	Irma Heimgaertner	239-368-1462
2	574332	Alfredo Marrero	561-642-4921
3	565319	Paul & Marian White	813-985-8397
4	564063	Premier Telecom, Inc.	954-784-6618
5	563489	Helen Dykas	561-967-1912
6	562120	Shannon Plichta	850-936-9060
7	564454	Joseph Royals	850-469-1101
8	557995	Odalys Acosta	813-890-8312
9	555995	Nora Moreno	813-899-9392

**COMPLAINTS FOR WHICH NCT FAILED TO
INCLUDE ALL THE REQUIRED STATEMENTS ON
THE TPV**

	CATS No.	Customer Name	BTN
1	565291	Adolfo Castela	727-736-8440
2	572851	Marta Bulnes	813-884-7387
3	555565	Helen Kepler	727-393-8299
4	559239	Juan Ramirez	813-350-0861
5	563690	GM Selby & Associate	305-666-6371
6	574615	Rafael Vallejo	305-893-0558
7	571367	Pamela Hausknecht	407-208-1214
8	572201	Maria Jenkins	772-563-4914
9	555451	Lydia Ruiz	813-948-7717
10	569462	Natasha Deltoro	813-221-3552
11	568180	Jorge Vivar	305-826-0770
12	560085	Johanna Nunez	813-888-6280
13	566915	Anado Batista	561-642-4947
14	566155	Roberto Maseda	305-266-1600
15	560469	Miguel Caban	813-622-7578
16	577411	Guillermina Ramirez	813-871-3710
17	578280	Juan Suarez	321-733-7836
18	578509	Loius Marquez	727-861-2445
19	579164	Azalez Fonseca	863-984-0931
20	579238	Anelo La Rosa	813-988-1576
21	580001	Juana Luya	813-884-5775
22	582162	Elizabeth Garcia	305-944-5396
23	583203	Maria C. Marin	305-825-4237
24	583230	Carmen Ramos	813-948-7931
25	584042	Jazz Irizarry	863-686-2492
26	585874	Oscar Gomez	941-358-6188
27	586611	Gladys Cruz	954-456-1298

**COMPLAINTS FOR WHICH NEW CENTURY CLAIMS
THE CUSTOMER WAS TRANSFERRED FROM MIKO**

	CATS No.	Customer Name	BTN
1	567027	Alicia Figueroa	305-221-4879
2	556390	Terry Dunphy	727-398-3494
3	557394	Michelle/Roland Hernande	407-260-6919
4	553084	Germinado Mosquera	305-652-8634
5	558324	Frank Accurso	813-839-7792
6	583301	Joseph Cardenas	904-287-9159

Docket No. 040062-TI
Date: June 17, 2004

Attachment H

Frank and Ricci App
P.O. Box 48602
Tampa, FL 33647

Hm. 813-977-6330
Wk. 813-483-2521

2004 NOV 17 AM 10:53
FBI
COMPETITIVE SERVICES

Ray E. Kennedy
Florida Public Service Commission
2450 Shumard Oak Blvd.
Tallahassee, FL 32399

RE: Follow-up on Complaint Case No. 557566T – Slamming by New Century Telecom

November 12, 2003

Dear Mr. Kennedy.

I submitted a complaint to the PSC on September 12, 2003 because my long distance and local toll service was changed without authorization by New Century Telecom. My individual complaint has been resolved and the case is now closed but I feel strongly that further action should be taken against New Century Tel to prevent this from happening to others.

As I stated in the complaint, my wife, Ricci received a telemarketing call at home from a man saying that he would like to send a free prepaid calling card for her to try out at no cost or obligation. The telemarketer said the free calling card was a promotion to introduce a new telephone company (New Century Telecom) that had started doing business in the area.

Ricci accepted the offer and the telemarketer asked her to verify her name and address by responding to a few computer-generated questions. Ricci responded with her name, date of birth, and with "yes" after the computer stated her address and asked her to verify it. The call ended with Ricci thinking that she would be receiving a prepaid calling card in the mail that was tied to some promotion with absolutely no obligation.

When I received our telephone bill, I immediately noticed that that our intrastate and interstate LD service had been changed from Verizon to new Century Telecom on 8/5. There were charges for LD activation, an LD monthly fee, LD calls made, taxes and surcharges from 8/25 through 8/20 in the amount of \$100.99.

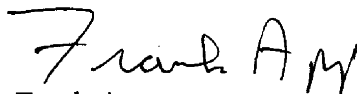
I called New Century Telecom's billing agent USBI on 9/8 and informed them that this was an unauthorized switch of service and requested that they credit my bill for the full amount which they did (Order # 534 0485).

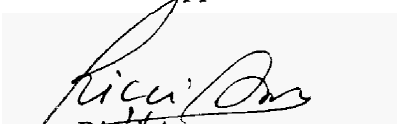
On 9/11, I followed up with New Century Telecom to make sure that they would not re-bill the charges in the future including the recurring monthly charge and also asked who authorized the switch. Sophia Hernandez played what she said was a 3rd party verification tape of the conversation with my wife. I listened to the tape and immediately conferenced my wife in so she could hear it too. The tape had parts of the original conversation with the telemarketer and the computer generated questions with Ricci's responses. However, the tape had been **edited to include additional questions** asking if Ricci was authorized to make changes to our telephone service and asking Ricci to verify her understanding that she was making a change to our intrastate and interstate LD service. **Ricci's "yes" voice response to a previous question regarding the free pre-paid calling card offer was "edited in" as the response to these additional questions to make it appear as if she agreed to change our telephone service! Again, these questions about changing service were never part of the original telemarketing call!**

Ms. Hernandez insisted that her company would not do any such thing and informed me that we were wrong and that we did in fact authorize the switch. I told her that they obviously have a problem with their telemarketing vendor and 3rd party verification process. I suggested that perhaps the telemarketing vendor doctored the tape to make it appear that my wife agreed to the change in service. Ms. Hernandez was very firm and quite argumentative that we must pay the bill and all she could do is re-rate the calls at the old Verizon rate that we had.

The bottom line here is that New Century Telecom and/or its telemarketing vendor committed **fraud** by offering a free prepaid calling card, representing that there was no obligation attached, and then switching our LD service without authorization. Furthermore, I believe that the way the tape of the call was edited to make it appear as if my wife agreed to change our LD service is a **criminal act**. I urge the Florida PSC to take action against New Century Telecom and its telemarketing vendor so this does not happen to anyone else.

Sincerely,


Frank App


Ricci App