

ORIGINAL

# The Helein Law Group, LLP

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August 9, 2004

**VIA OVERNIGHT MAIL**

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

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

Dear Ms. Bayo:

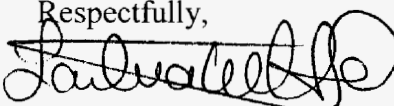
On behalf of New Century Telecom, Inc., enclosed please find the company's Objections and Responses to the Public Counsel's First Set of Interrogatories and First Request for Production of Documents in the above-referenced docket.

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

RECEIVED & FILED

  
FPSC-BUREAU OF RECORDS

Respectfully,



Loubna W. Haddad  
Regulatory Counsel

cc: Charles Beck  
Lee Fordham  
E.C. Deeno Kitchen  
Gary Ketchum

DOCUMENT NUMBER-DATE

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Compliance Investigation of )  
New Century Telecom, Inc. for )  
Apparent violation of Rule 25-4.118, ) Docket No. 040062-TI  
F.A.C., Local, Local Toll, or Toll )  
Provider Selection. )  
\_\_\_\_\_)

**NEW CENTURY TELECOM, INC.’S OBJECTIONS AND ANSWERS TO  
CITIZENS’ FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

COMES NOW New Century Telecom, Inc. (“NCT”), by and through undersigned counsel, and files its Objections and Answers to Citizens’ First Set of Request for Productions of Documents pursuant to Fla. R. Civ. P. 1.350 and states as follows:

**Preliminary Statement**

By making documents available, NCT does not waive any objections it may have regarding the use of such documents, or the truth or accuracy of any term, phrase or characterization used or made in the Request for Production of Documents. NCT expressly reserves the right to object to Citizens’ use of any documents provided, in whole or in part, in any later stage or proceeding in this action or in any other litigation or proceeding.

By agreeing to produce documents in response to a particular numbered paragraph of the Request (each, a “Request”), NCT makes no representation about the existence of documents responsive to that Request. Moreover, should privileged or otherwise protected documents be inadvertently produced, such production does not constitute a waiver of privilege or ability to assert that the documents are privileged or otherwise protected.

Each of NCT's individual responses to the Request is subject to the following General Objections. Reference to any one General Objection in a Response shall not be construed as a waiver of any other General Objection.

NCT expressly reserves the right to supplement its Responses as and to the extent required by law.

### **General Objections**

1. NCT objects in whole or in part to each and every Request to the extent that, through applicable Instructions, it seeks to impose obligations and duties on NCT beyond those required under the Florida Rules of Civil Procedure.

2. NCT objects in whole or in part to each and every Request to the extent that it purports to seek documents that were generated, received, or obtained by NCT after the anticipation or commencement of this proceeding, are protected from disclosure by the attorney-client privilege and/or work product doctrine, reflect trade secrets, or constitute or contain confidential commercial information or information made confidential by law.

3. NCT objects to each and every Request to the extent that it is not reasonably limited in time to the period at issue in this proceeding.

4. NCT objects to each and every Request to the extent it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

5. NCT objects to each and every Request to the extent it is impermissibly vague, ambiguous, overbroad and/or unduly burdensome.

6. NCT objects to each and every Request to the extent it seeks to harass, embarrass and/or burden NCT.

7. NCT objects to each and every request to the extent it calls for documents not within its possession, custody and/or control or documents that are already within Citizens' possession, custody and/or control.

### **Specific Objections and Responses**

**REQUEST NO. 1:** Provide all documentation, information, electronic files, emails, intracompany correspondence, notes, memos, letters, or other means of written communication that mentions[,] describes[,] lists or otherwise denote[s] any complaint or contact from Florida consumers regarding service, slamming, cramming, or billing problems with New Century Telecom, Inc. from January 1, 2003 through June 30, 2004.

**OBJECTION AND RESPONSE:** NCT incorporates its Preliminary Statement and General Objections stated above. NCT further objects to this Request to the extent it is overbroad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of material relevant to the subject matter of this investigation. *See* Fla.R.Civ.P. 1.280(b). More specifically, documents and information regarding complaints by Florida consumers about service, cramming or billing problems are irrelevant to the question of whether NCT apparently violated Rule 25-4.118, F.A.C. relating to the selection of toll providers in Florida. NCT further objects to this Request on the basis that it is repetitive and seeks the exact same documents and information requested by the Florida Public Service Commission in its Subpoena Duces Tecum Without Deposition, which responsive documents and information NCT has produced and to which Citizens, as Intervenors in this proceeding, have access.

**REQUEST NO. 2:** Provide copies of all standard, periodic or specifically prepared company reports that have been issued or produced by the company that quantify the number of and/or type of complaints received directly by the company (as opposed to regulatory complaints) relating to customer service, slamming (unauthorized transfer of

service), cramming (addition of unauthorized services or charges to a customer bill) or billing problems from January 1, 2003, through June 30, 2004.

**OBJECTION AND RESPONSE:** NCT incorporates its Preliminary Statement and General Objections stated above. NCT further objects to this Request as redundant and repetitive to the extent that the information sought is encompassed within the documents sought in Request No. 1. NCT further objects to this Request as overbroad to the extent that it is not limited to documents relating to NCT's Florida operations and customers, as vague to the extent that the term "report" is not defined, and on the basis that the information sought regarding customer service, cramming and billing problems is irrelevant to the question of whether NCT apparently violated Rule 25-4.118, F.A.C. relating to the selection of toll providers in Florida. Subject to and without waiving these objections, NCT responds that no such documents exist.

**REQUEST NO. 3:** Provide copies of all company documents that have been furnished to any government agency relating to complaints by Florida customers regarding customer service, slamming, cramming or billing problems with New Century Telecom, Inc. from January 1, 2003, through June 30, 2004.

**OBJECTION AND RESPONSE:** NCT incorporates its Preliminary Statement and General Objections stated above. NCT further objects to this Request on the basis that the information sought regarding customer service, cramming and billing problems is irrelevant to the question of whether NCT apparently violated Rule 25-4.118, F.A.C. relating to the selection of toll providers in Florida. Subject to and without waiving these objections, NCT responds that, to the extent any responsive, non-privileged documents exist and are within NCT's possession, custody and control, they have been produced to the Florida Public Service Commission in response to its Subpoena Duces Tecum

Without Deposition and are, therefore, already available to the Citizens for inspection and copying.

**REQUEST NO. 4:** Please provide a copy of all advertising or other promotional materials that have been distributed to or within Florida markets exclusively or national markets of which Florida is a part by New Century Telecom, Inc. or its agents relating to the provision of telecommunications services from January 1, 2003, through June 30, 2004.

**OBJECTION AND RESPONSE:** NCT incorporates its Preliminary Statement and General Objections stated above. NCT further objects to this Request on the basis that the information sought is irrelevant to the question of whether NCT apparently violated Rule 25-4.118, F.A.C. relating to the selection of toll providers in Florida. Subject to and without waiving these objections, NCT responds that no such documents exist.

**REQUEST NO. 5:** Please provide a copy of all contracts, correspondence, scripts and other materials in the company's possession that relate to the provision of billing services, sales services and/or third party verification service by third parties.

**OBJECTION AND RESPONSE:** NCT incorporates its Preliminary Statement and General Objections stated above. NCT further objects to this Request to the extent it is overbroad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of material relevant to the subject matter of this investigation. *See* Fla.R.Civ.P. 1.280(b). More specifically, the documents and information sought and the company's contractual relations with third parties are irrelevant to the question of whether NCT apparently violated Rule 25-4.118, F.A.C. relating to the selection of toll providers in Florida. NCT further objects to this Request as overbroad, to the extent that it is not limited to a specific timeframe relevant to this proceeding and seeks documents beyond those relating to NCT's Florida customer and operations.

**REQUEST NO. 6:** Please provide copies of all documents in the possession of the company that relate to any transactions that resulted in the bulk transfer of customers

from a provider that is another corporate entity to New Century Telecom, Inc. as the new provider of service for Florida customers.

**OBJECTION AND RESPONSE:** NCT incorporates its Preliminary Statement and General Objections stated above. NCT further objects to this Request to the extent it is not limited to a specific time period that is relevant to this proceeding and seeks confidential and proprietary information. Subject to and without waiving these objections, NCT responds that no such documents exist.

**REQUEST NO. 7:** Please provide a copy of each of the company's annual reports(s) that have been prepared for stockholders or governmental agencies from January 1, 2002 through June 30, 2004.

**OBJECTION AND RESPONSE:** NCT incorporates its Preliminary Statement and General Objections stated above. NCT further objects to this Request to the extent it is overbroad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of material relevant to the subject matter of this investigation, namely, whether or not NCT apparently violated Rule 25-4.118, F.A.C. relating to the selection of toll providers in Florida. NCT further objects to this Request as overbroad, to the extent that it is not limited to a specific timeframe relevant to this proceeding and seeks documents beyond those relating to NCT's Florida customer and operations. Subject to and without waiving these objections, NCT responds that any relevant reports are available from the Florida Secretary of State's office and/or the Florida Public Service Commission.

**REQUEST NO. 8:** Please provide a copy of any organization chart identifying all management personnel and a personnel chart that identifies management responsibilities.

**OBJECTION AND RESPONSE:** NCT incorporates its Preliminary Statement and General Objections stated above. NCT further objects to this Request to the extent it is

overbroad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of material relevant to the subject matter of this investigation, namely, whether or not NCT apparently violated Rule 25-4.118, F.A.C. relating to the selection of toll providers in Florida. NCT further objects to this Request as overbroad, to the extent that it is not limited to a specific timeframe that is relevant to this proceeding and seeks documents beyond those relating to NCT's Florida customers and operations. Subject to and without waiving these objections, NCT responds that no such documents exist.

**REQUEST NO. 9:** Please provide a copy of all company documents, including practices, correspondence or directives that relate to the handling of customer complaints that are received from regulatory bodies, including Florida, the Federal Communications Commission or other state regulatory agencies.

**OBJECTION AND RESPONSE:** NCT incorporates its Preliminary Statement and General Objections stated above. NCT further objects to this Request to the extent it is overbroad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of material relevant to the subject matter of this investigation, namely, whether or not NCT apparently violated Rule 25-4.118, F.A.C. relating to the selection of toll providers. NCT further objects to this Request as overbroad, to the extent that it is not limited to a specific timeframe relevant to this proceeding and seeks documents beyond those relating to NCT's Florida customers and operations. Subject to and without waiving these objections, NCT responds that no such documents exist.

**REQUEST NO. 10:** Please provide a copy of any settlements that have been proposed to or negotiated with any other governmental agency by the company relating to customer service complaints, slamming, cramming or billing problems since January 1, 2002.

**OBJECTION AND RESPONSE:** NCT incorporates its Preliminary Statement and General Objections stated above. NCT further objects to this Request to the extent it is overbroad and seeks documents that are neither relevant nor reasonably calculated to lead



to the discovery of material relevant to the subject matter of this investigation, namely, whether or not NCT apparently violated Rule 25-4.118, F.A.C. relating to the selection of toll providers in Florida. NCT further objects to this Request to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine and/or any other applicable privilege. NCT further objects to this Request as overbroad, to the extent that it is not limited to a specific timeframe relevant to this proceeding and seeks documents beyond those relating to NCT's Florida customers and operations. Subject to and without waiving these objections, NCT responds that no such documents exist.

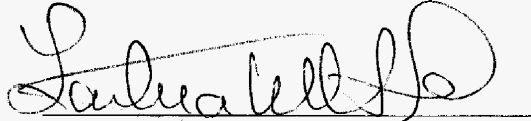
**REQUEST NO. 11:** Please provide any documents that identify any persons employed by the company or its agents who have provided customer service, or third party verification service or marketing services that have been terminated by the company from January 1, 2002 through June 30, 2004 due to improper customer service, slamming or cramming of Florida customers.

**OBJECTION AND RESPONSE:** NCT incorporates its Preliminary Statement and General Objections stated above. NCT further objects to this Request to the extent it is overbroad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of material relevant to the subject matter of this investigation, namely, whether or not NCT apparently violated Rule 25-4.118, F.A.C. relating to the selection of toll providers in Florida. NCT further objects to this Request to the extent that it seeks documents that constitute or contain confidential and proprietary information. NCT further objects to this Request to the extent that it seeks production of documents that could or would expose NCT to actions for invasion of privacy, defamation and/or other legal liability. Subject to and without waiving these objections, NCT responds that no such documents exist.

Dated this 9<sup>th</sup> day of August, 2004.

Respectfully submitted,  
New Century Telecom, Inc.

By:



The Helein Law Group, LLP  
Its Counsel

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McLean, Virginia 22102  
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Fax: (703) 714-1330

Of counsel:

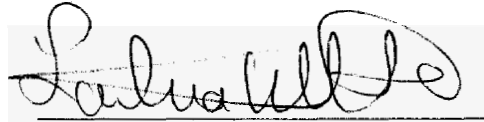
E.C. Deeno Kitchen  
Gary Ketchum  
Dobson, Kitchen & Smith  
610 N. Duval Street  
Tallahassee, FL 32301

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been furnished by overnight mail to the following parties this 9<sup>th</sup> day of August, 2004:

Charles J. Beck  
Deputy Public Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
Room 812  
Tallahassee, FL 32399-1400  
(Counsel for Florida's Citizens)

Lee Fordham  
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(Counsel for the Florida Public Service Commission)



Loubna W. Haddad