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State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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COMMISSION  
CLERK

**DATE:** September 23, 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) C.F.T.  
Office of Standards Control & Reporting (Lowery) PLK

**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:** 10/05/2004 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\040062.REV2.RCM.DOC

### Discussion of Issues

**Issue 1:** Should the Commission accept New Century Telecom, Inc.'s settlement offer, dated July 20, 2004, 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 after issuance of the Consummating Order, registration number TI427 should be removed from

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the register, the company's tariff should be cancelled, and the company should be required to immediately cease and desist providing intrastate interexchange telecommunications services within Florida. **(Buys, L. Fordham, Rojas, Teitzman)**

**Staff Analysis:** New Century Telecom, Inc. (New Century) is a switchless reseller of interexchange telecommunications services headquartered in McLean, Virginia. New Century's interexchange company (IXC) registration and tariff became effective on March 20, 1996.

From August 26, 2003, through March 23, 2004, the Commission received fifty-four (54) slamming complaints against 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 New Century failed to comply with the specific verification methodologies required by the Commission's slamming rules and apparently used misleading statements during the company's telemarketing to solicit those consumers as subscribers.

Since March 23, 2004, the Commission received an additional twenty-two (22) slamming complaints, three complaints regarding improper billing, and one cramming complaint. These additional complaints are not addressed in this docket. As of August 20, 2004, the Commission had received a total of eighty-two (80) complaints against New Century.

On January 21, 2004, staff opened this docket to address New Century's apparent slamming infractions and misleading telemarketing. Staff filed a 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 New Century's request. Staff's recommendation was again filed on May 6, 2004, for the May 18, 2004, Agenda Conference. On May 12, 2004, New Century submitted its first settlement offer to resolve the apparent slamming violations in this docket. Consequently, staff's recommendation was deferred from the May 18, 2004, Agenda Conference to facilitate review of the company's settlement proposal. On June 17, 2004, staff filed a recommendation for the Commission to reject New Century's first settlement offer. At the June 29, 2004, Agenda Conference, the Commission deferred staff's recommendation and directed staff and New Century to negotiate a possible settlement within 30 days.

From July 9, 2004, through September 14, 2004, staff and New Century corresponded through six letters, numerous emails, and held a face to face meeting on July 13, 2004, in an effort to reach a settlement. In its settlement offer dated July 20, 2004 (Attachment A), New Century is offering to do the following:

- Make a voluntary contribution to the Florida General Revenue Fund in the amount of \$151,500. 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, for twenty-seven (27) weeks, and a final payment in the amount of \$1,350 in the final (28<sup>th</sup>) week.
- Refund or credit the full amount of any charges incurred by each of the 42 customer complaints cited in the recommendation to the extent not already credited or refunded.

- Establish the telemarketing compliance program (Attachment B) included in its settlement proposal.
- 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 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.
  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 (TPV) script (Attachment C) included in 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.
- Within 30 days from the effective date of the settlement agreement, discontinue using Teco Verification, Inc. as its third party verification company and require the new TPV company to use the verification script in its settlement and require the TPV company to include the date of the verification on the recording.
- Work with Commission staff to establish a warm transfer line between the Commission and the company's customer service department which shall be operational within 120 days of the effective date of the settlement.

Staff does not support New Century's settlement proposal for the reasons listed herein.

1. Staff requested that New Century cease using pre-recorded questions with a simple response of "yes" in its TPVs. The revised script cited in New Century's settlement offer follows the same format with the exception that the statements required by the Commission's slamming rule that were previously excluded have been added. New Century declined to change its verification methodologies.
2. Staff requested that New Century record the telemarketing calls to Florida consumers and agree to make those recordings available to staff for review upon reasonable notification. New Century declined.
3. Staff requested that New Century cease using its current TPV company and use a different independent and unaffiliated TPV company. New Century indicated to staff that InfoCorp., Inc. (InfoCorp) is the new TPV company it plans to use. Based on the information listed below, staff believes that InfoCorp is not independent of New Century

as required by Rule 25-4.118(2)(c), F.A.C. New Century contends that InfoCorp is independent and unaffiliated with New Century.

- a. The sole owner and officer of InfoCorp is Jane M. Scott. On March 5, 2002, Jane M. Helein-Scott submitted an annual report to the Connecticut Department of Public Utility & Control on behalf of New Century as a legal assistant for The Helein Law Group, LLP.
  - b. New Century shares the same address as that of its legal counsel, The Helein Law Group, LLP. 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 Florida Secretary of State, Division of Corporations, New Century deleted Charles H. Helein as the CEO and added Karyn Bartel.
  - c. During staff's initial investigation of the slamming complaints against New Century, on November 20, 2003, Ms. Loubna W. Haddad, legal counsel for New Century, informed staff via telephone that a company by the name of InfoCorp was handling New Century's complaints and that staff should direct its inquiries regarding the customer complaints to InfoCorp., Inc. Hence, during the initial phase of its investigation, and this docket, staff was working with InfoCorp to resolve the slamming complaints.
4. Staff requested that New Century provide staff with all information related to complaints the company received from Florida consumers during the past year. New Century declined. However, it did provide copies of all the consumer complaints it received from the Commission that are the subject of this docket.
  5. Staff requested that New Century post a \$1,000,000 Surety Bond to guarantee New Century's compliance with its settlement agreement. New Century declined.
  6. The Office of Public Counsel (OPC) served New Century with a request for production of documents and interrogatories. New Century objected to each and every one of the requests, and as of the filing date of this recommendation, has not provided OPC with any documentation.

New Century's monetary offer of \$151,500 is consistent with previous settlement amounts the Commission has approved for similar cases. However, for the reasons cited above, and because New Century is apparently unwilling to change the processes and procedures it uses that caused the slamming complaints initially, staff cannot support the company's settlement proposal.



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. The 42 consumer complaints regarding carrier changes cited in this docket appear to be slamming infractions.

In 9 cases, listed in Attachment D, 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 E, 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 F, New Century provided staff with a TPV in which the customer authorized a carrier change for Miko Telephone Communications, Inc. (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 waiver of Rule 25-4.118, F.A.C. to transfer the customer base.

New Century markets its services to Florida consumers through its own telemarketers. 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 telemarketing 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. Further, 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, 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

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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 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 TPV recordings staff reviewed, the telemarketer stayed on the line during the verification process and prompted the customer to answer verification questions; meaning the TPV was not performed independently by the third party as required by Rule 25-4.118(2)(c), F.A.C. 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.

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.

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. 1<sup>st</sup> DCA 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)].

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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. 1<sup>st</sup> 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. 3<sup>rd</sup> 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).

Therefore, staff recommends that the Commission should reject New Century Telecom, Inc.’s settlement offer, and 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 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. The Commission is vested with jurisdiction over this matter pursuant to Sections 364.02(13), 364.04, 364.285 and 364.603, Florida Statutes.

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**Issue 2:** Should this docket be closed?

**Recommendation:** 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. **(L. Fordham, Rojas, Teitzman)**

**Staff Analysis:** Staff recommends that the Commission take action as set forth in its recommendation.



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 \_\_\_\_\_, 2004 by and between New Century Telecom, Inc., (the "Company") and the Florida Public Service Commission (the "Commission") (collectively referred to as the "Parties").

WHEREAS, on April 21, 2004 a Memorandum containing a recommendation in this docket ("Recommendation") 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 Recommendation 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 Commission Staff engaged in discussions and exchanged certain information relevant to the Recommendation;

WHEREAS, as a result of those discussions and information, the Company sought to resolve the issues raised by the Recommendation through settlement and the Commission indicated its willingness to consider the Company's settlement offer provided that the terms of the settlement the material issues of the Recommendation; and

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

NOW THEREFORE, the Company and 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 Staff Recommendation in Docket No. 040062-TI.

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 Recommendation.

3. The Commission agrees that, in the absence of material new evidence relating to issues described in the Recommendation that the Commission did not obtain through its investigation for the Recommendation or is not otherwise currently in the Commission's possession, the Commission will not use the facts developed for the Recommendation, 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 Recommendation. 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 may result in 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. For a period of two years from the Effective Date, Company will provide the Commission with quarterly reports

identifying customer complaints. The reports shall contain a brief description of the nature of each complaint, the customer name and telephone number, the date and amount of any refund or credits issued for each complaint and the action Company took in final resolution of each complaint.

- (vi) Reporting: Within 60 days from the Effective Date, the Company will provide a formal report to the Commission. 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 Commission Staff shall work together to modify the attached script if need be.
- (viii) Third Party Verification Company: Within 30 days from the Effective Date, Company will discontinue using Teco Verification, Inc. as its third party verification company and will use, in its stead, another unaffiliated third party verification company. Company shall require the new third party verification company to use the verification script attached hereto, as may be modified by the Parties, and to record on the verification tape the date the verification was performed.
- (ix) Transfers of Customer Base: Company will not acquire or transfer any customer base in Florida except as provided in an Rule 25-4.118, Florida Administrative Code.
- (x) Warm Line Transfer: Company will work with the Commission to establish a warm line transfer between the Commission and Company's customer service department. The warm line transfer will be finalized and ready for operation within 120 days after the Effective Date.

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 28<sup>th</sup> week. The Commission 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. 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.

10. The Company represents that it has reviewed and understands the Florida Public Service Commission rule requirements and agrees to comply with those requirements.

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 Parties' the 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 Commission or the Company may withdraw from this Settlement if any revision, change, addition, or modification is made to its terms.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. The Parties agree that they will take such other actions as may be necessary to effectuate the objectives of this Settlement.

20. This Settlement may be signed in counterparts.

Florida Public Service Commission

New Century Telecom, Inc.

By: \_\_\_\_\_

By: Karyn Bartel  
President

Date \_\_\_\_\_

Date \_\_\_\_\_



**NEW CENTURY TELECOM, INC.  
TELEMARKETING COMPLIANCE PROGRAM**

The following sets forth New century Telecom, Inc.'s (hereinafter "Company") policy of mandatory compliance with applicable federal and state rules and regulations governing the telemarketing and switching of telephone service. The Company's policy consists of the following rules, monitoring procedures and disciplinary actions governing the telemarketing of prospective customers.

1. Each telemarketer is given and required to maintain a copy of this Compliance Program.
2. Each telemarketer is examined on his/her knowledge and understanding of this Compliance Program.
3. Each telemarketer is given a copy and required to read, understand and adhere to the marketing script attached hereto describing the Company's services and charges, which may be amended by the Company from time to time.
4. Each telemarketer is given and required to maintain a copy of the Federal Communications Commission ("FCC") rules governing the switching of telephone services as attached hereto.
5. Each telemarketer is given and required to maintain a copy of the federal Telemarketing Sales Rule as attached hereto.
6. Each telemarketer is given and required to maintain a copy of the rules governing the switching of telephone services of the State of Florida as attached hereto.
7. Each telemarketer is given and required to maintain a copy of the federal do-not-call laws, as well as the do-not-call laws of the State of Florida as attached hereto.
8. Each telemarketer is informed that the Company monitors and evaluates compliance with the Company's Compliance Program using individuals to listen in on calls, who patrol the telemarketing area for purposes of overhearing the telemarketers' portions of calls and to pose questions about the Compliance Program.
9. Each telemarketer is instructed to disclose any information he/she obtains that implicates the Company's Compliance Program.
10. All monitoring of calls and patrols of work area is conducted at random and without notification.
11. Company has established a program to cross check by BTN the telemarketer associated with any complaint based on any aspect of the telemarketing.

12. Should a telemarketer be found to have (i) substantially deviated from Company-provided scripts, (ii) misled or deceived any prospective customer, (iii) acted other than in substantial compliance with any applicable FCC or state rule, or (iv) been responsible for a complaint based on the marketing/sales event, a written report shall be provided detailing the error, specifying the applicable requirement and issuing a warning that a repetition may lead to further disciplinary action.
13. Any telemarketer found to have again engaged in the conduct listed in paragraph 12 shall receive a written report as outlined and shall be suspended for a period of 3 days.
14. Any telemarketer found to have engaged in the conduct listed in paragraph 12 for a third time shall be terminated and subject to forfeiture of any outstanding commissions related to such conduct.\*
15. Each telemarketer must sign his/her copy of Company's Compliance Program as provided below.
16. Company shall review and update its Compliance Program as necessary to maintain compliance with federal and state telemarketing and verification rules and regulations.

**SEEN AND AGREED:**

I, \_\_\_\_\_, hereby acknowledge and agree that I have received, reviewed and understand the New Century Telecom, Inc. Compliance Program; that I am obligated to adhere to and comply with its terms; and that any failure to comply with the Compliance Program will result in disciplinary action, including termination of my services.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\* This "3 and out" rule is necessitated to protect New Century Telecom, Inc. against allegations of wrongful termination based on a variety of legal theories such as age or gender discrimination, defamation, and so forth.

**SAMPLE SALES SCRIPT  
NEW CENTURY SCRIPT**

HELLO MR./MRS. \_\_\_\_\_. THIS IS \_\_\_\_\_ CALLING FROM NEW CENTURY TELECOM.

WE ARE CALLING TO OFFER YOU OUR LOW RATES FOR LONG DISTANCE TELEPHONE SERVICE INCLUDING INTERSTATE RATES AND INTRASTATE RATES.

ARE YOU DULY AUTHORIZED BY THE TELEPHONE ACCOUNT OWNER TO MAKE CHANGES TO AND/OR INCUR CHARGES ON THE TELEPHONE ACCOUNT?  
**(CUSTOMER MUST SAY "YES")**

AND YOU ARE OVER THE AGE OF 18? **(CUSTOMER MUST SAY "YES")**  
(CONTINUE ONLY IF ANSWER IS YES TO BOTH QUESTIONS, IF NO, EXPLAIN THAT WE WILL CALL AT A LATER DATE)

WE ARE CURRENTLY OFFERING A LOW RATE OF \_\_\_\_\_ PER MINUTE FOR STATE-TO-STATE AND IN-STATE CALLS BETWEEN THE HOURS OF 8:00 AM TO 6:00 PM AND \_\_\_\_\_ PER MINUTE STATE-TO-STATE AND IN-STATE BETWEEN THE HOURS OF 6:01 PM AND 7:59 AM SEVEN (7) DAYS A WEEK. THESE RATES CARRY A RECURRING **MONTHLY FEE OF \_\_\_\_\_**. WE ALSO OFFER VERY COMPETITIVE INTERNATIONAL RATES THAT CAN BE VIEWED ON OUR WEB PAGE AT WWW.NEWCENTURYTELECOM.COM. YOUR LOCAL PHONE COMPANY MAY ALSO CHARGE A SMALL FEE TO CHANGE YOUR LONG DISTANCE CARRIER TO NEW CENTURY.

PLEASE UNDERSTAND THAT NEW CENTURY IS NOT AFFILIATED WITH YOUR LOCAL TELEPHONE COMPANY ALTHOUGH YOUR NEW RATES WILL BE BILLED ON YOUR LOCAL TELEPHONE BILL, AS BILLED ON BEHALF OF ILD FOR NEW CENTURY.

MR./MRS. \_\_\_\_\_, IF THIS SOUNDS GOOD TO YOU, I WILL PUT YOU THRU A VERIFICATION PROCESS THAT WILL VERIFY AND RECORD SOME BASIC INFORMATION TO COMPLETE THE ORDER, THIS WILL ONLY TAKE A FEW SECONDS.

MR./MRS. \_\_\_\_\_, THANK YOU VERY MUCH FOR YOUR ORDER. THERE IS NO CONTRACT AND THE SERVICE CAN BE CANCELLED AT ANY TIME WITHOUT PENALTY. SHOULD YOU WANT TO CANCEL OR IF YOU HAVE ANY QUESTIONS OR CONCERNS, PLEASE FEEL FREE TO CONTACT OUR CUSTOMER SERVICE DEPARTMENT AT 1-800-711-1322, YOU CAN ALSO CONTACT US ON OUR WEB PAGE AT WWW.NEWCENTURYTELECOM.COM.

THANK YOU VERY MUCH AND HAVE A GREAT DAY.

**VENTAS  
NEW CENTURY SCRIPT**

BUENOS DIAS, TARDES SR. SRA. \_\_\_\_\_, ESTE/A ES \_\_\_\_\_ Y LLAMO DE LA COMPANIA NEW CENTURY TELECOM.

LE ESTAMOS LLAMANDO PARA OFRECERLE NUESTRAS BAJAS TARIFAS DE LARGA DISTANCIA PARA LLAMADAS DENTRO Y FUERA DEL ESTADO.

ES USTED UNA PERSONA AUTORIZADA POR LA PERSONA DUENA DEL TELEFONO PARA REALIZAR CAMBIOS O AUTORIZAR CARGOS EN LA CUENTA TELEFONICA?  
**(CLIENTE DEBE DECIR "SI" PARA CONTINUAR)**

Y ES USTED MAYOR DE 18 ANOS **(CLIENTE DEBE DECIR "SI" PARA CONTINUAR)**  
(CONTINUE UNICAMENTE SI LA RESPUESTA A LAS DOS PREGUNTAS ANTERIORES FUERON SI, SI NO INDIQUE QUE VOLVERA A LLAMAR EN OTRO MOMENTO)

ACTUALMENTE ESTAMOS OFRECIENDO NUESTRO NUEVO PLAN DE \_\_\_\_\_ EL MINUTE POR LLAMADAS DE ESTADO A ESTADO Y DENTRO DE SU ESTADO EN HORARIO DE 8:00AM A 6:00PM Y \_\_\_\_\_ EL MINUTO POR LLAMADAS DE ESTADO A ESTADO Y DENTRO DE SU ESTADO EN EL HORARIO DE 6:01PM A 7:59AM, LOS SIETE (7) DIAS DE LA SEMANA. ESTA TARIFA INLCUYE UN CARGO MENSUAL DE \_\_\_\_\_ ASI MISMO OFRECEMOS TARIFAS INTERNACIONALES ALTAMENTE COMPETITIVAS LAS MISMAS QUE PUEDEN SER REVISADAS EN NUESTRA PAGINA WEB [WWW.NEWCENTURYTELECOM.COM](http://WWW.NEWCENTURYTELECOM.COM) SU CAMPANIA LOCAL PUEDE ADICIONAR UN PEQUENO CARGO POR CAMBIAR SU SERVICIO DE LARGADISTANCIA CON NEW CENTURY.

POR FAVOR ENTIENDA QUE NEW CENTURY NO ESTA AFILIADA CON SU COMPANIA LOCAL A PESAR DE QUE SU NUEVO TARIFARIO SERA REGISTRADO EN SU RECIBO DE LA COMPANIA LOCAL. SU RECIBO SE REGISTRARA A NOMBRE DE ILD EN REPRESENTACION DE NEW CENTURY.

SR/SRA \_\_\_\_\_, SI ESTO LE PARECE BIEN LE COMUNICARE A MI OPERADORA PARA INICIAR EL PROCESO DE VERIFICACION PARA VERIFICAR Y GRABAR ALGUNA INFORMACION BASICA PARA PODER COMPLETAR SU ORDEN, SOLO LE TOMARA ALGUNOS SEGUNDOS.

SR/SRA \_\_\_\_\_, MUCHAS GRACIAS POR SU ORDEN. NO EXISTE NINGUN CONTRATO Y EL SERVICIO PUEDE SER CANCELADO EN CUALQUIER MOMENTO SIN NINGUNA PENALIDAD. SI UD. DESEARA CANCELARO SI TUVIERA ALGUNA CLASE DE PREGUNTAS POR FAVOR SIENTASE LIBRE DE CONTRACTAR NUESTRO DEPARTAMENTO DE ATENCION AL CLIENTE AL 1-800-711-1322, O SI LO PREFIERE LO PUDED HACER POR INTERNET EN NUESTRA PAGINA WEB [WWW.NEWCENTURYTELECOM.COM](http://WWW.NEWCENTURYTELECOM.COM).

MUCHAS GRACIAS Y QUE TENGA UN BUEN DIA.



**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.**

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

	<b>CATS No.</b>	<b>Customer Name</b>
1	561034	Irma Heimgaertner
2	574332	Alfredo Marrero
3	565319	Paul & Marian White
4	564063	Premier Telecom, Inc.
5	563489	Helen Dykas
6	562120	Shannon Plichta
7	564454	Joseph Royals
8	557995	Odalys Acosta
9	555995	Nora Moreno

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

	<b>CATS No.</b>	<b>Customer Name</b>
1	565291	Adolfo Castela
2	572851	Marta Bulnes
3	555565	Helen Kepler
4	559239	Juan Ramirez
5	563690	GM Selby & Associates
6	574615	Rafael Vallejo
7	571367	Pamela Hausknecht
8	572201	Maria Jenkins
9	555451	Lydia Ruiz
10	569462	Natasha Deltoro
11	568180	Jorge Vivar
12	560085	Johanna Nunez
13	566915	Anado Batista
14	566155	Roberto Maseda
15	560469	Miguel Caban
16	577411	Guillermina Ramirez
17	578280	Juan Suarez
18	578509	Loius Marquez
19	579164	Azalez Fonseca
20	579238	Anelo La Rosa
21	580001	Juana Luya
22	582162	Elizabeth Garcia
23	583203	Maria C. Marin
24	583230	Carmen Ramos
25	584042	Jazz Irizarry
26	585874	Oscar Gomez
27	586611	Gladys Cruz

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

	<b>CATS No.</b>	<b>Customer Name</b>
1	567027	Alicia Figueroa
2	556390	Terry Dunphy
3	557394	Michelle/Roland Hernandez
4	553084	Germinado Mosquera
5	558324	Frank Accurso
6	583301	Joseph Cardenas