

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

OCTOBER 5, 2004

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. (Deferred from June 29, 2004 conference; revised recommendation filed.)

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 the register, the company's tariff should be cancelled, and the company should be required to immediately cease and desist providing intrastate interexchange telecommunications service within Florida.

\* Show cause as to why New Century should not be fined \$420,000.00. Give the company 20 (twenty) days to respond; if the company provide a settlement offer with the points cover in staff's recommendation and in discussion at the Conference, and with the understanding that money can be escrowed (rather than securing a surety bond), the offer will be brought back to the Commission for consideration.

MODIFIED

COMMISSIONERS ASSIGNED: All Commissioners

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

Handwritten signatures of majority commissioners: Chuck M. Drost, Alan J. [unclear], [unclear], J. [unclear], and [unclear].

Blank lines for dissenting signatures.

REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER - DATE

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FPSC-COMMISSIONER CLERK

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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 service 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.

\* See Issue 1

**MODIFIED**