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The Helein Law Group, LLP

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November 12, 2004

Via Overnight Mail

Blanca S. Bayo, Director  
Division of the Commission Clerk & Administrative Services  
Florida Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

DISTRIBUTION CENTER  
04 NOV 15 AM 9:59

Re: Docket No. 040062-TI, Order NO. PSC-04-1029-SC-TI, October 25,  
2004 and Amendatory Order, November 4, 2004.

Dear Director:

On behalf of New Century Telecom, Inc., (NCT) and in compliance with the third ordering clause of the above referenced Order, submitted herewith is a revised offer of settlement pursuant to Part V of the Order and in full compliance with the terms of Part V subject to the following clarifications.

The escrow deposit of \$15,000 as required by Part V.3., has been made to the escrow account of The Helein Law Firm LLLP, #5131862646, BB&T Bank, McLean, Va.

NCT has identified three independent third party verification companies to conduct verifications of customer orders. If the Staff approves one or more of these companies, NCT will institute negotiations with those approved to finalize a contract with that company that offers the best terms. Until that contract is finalized, NCT will not market or sell its services in Florida.

The three companies identified are:

ACI Telecentrics, Inc.  
3100 W. Lake Street, Suite 300  
Minneapolis, MN 55416

CMP \_\_\_\_\_  
COM \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
MMS \_\_\_\_\_  
RCA \_\_\_\_\_  
SCR \_\_\_\_\_  
SEC | \_\_\_\_\_  
OTH \_\_\_\_\_

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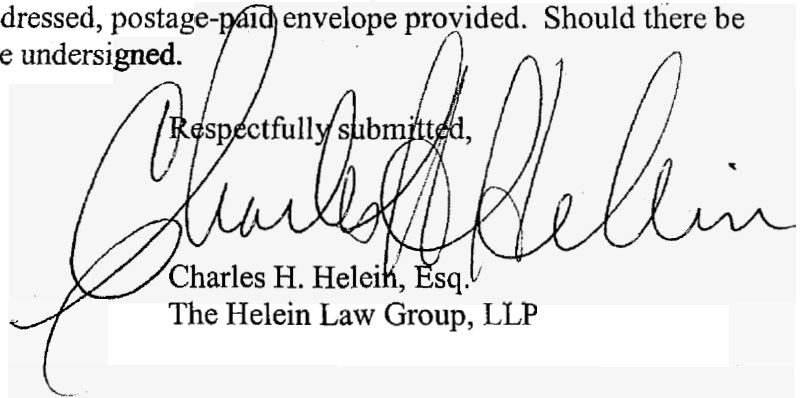
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Advance Telemanagement Group  
8912 E. Pinnacle Peak Road  
Suite 423  
Scottsdale, AZ 85255

VoiceLog, LLC  
6904 Old Gate Lane  
Rockville, MD 20852

An extra copy of this letter and filing is enclosed to be date-stamped and returned to the undersigned in the pre-addressed, postage-paid envelope provided. Should there be any questions, please contact the undersigned.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "Charles H. Helein". The signature is written over a light gray rectangular background.

Charles H. Helein, Esq.  
The Helein Law Group, LLP

**Enclosures**

cc: E.C. Deeno Kitchen, Dobson, Kitchen & Smith  
Gary M. Ketchum, Dobson, Kitchen & Smith  
Charles Beck, Office of Public Counsel  
Dale R. Buys, Competitive Markets and Enforcement  
Lee Fordham, Esq., Office of General Counsel  
Adam Teitzman, Esq., Office of General Counsel  
Rick Moses, Chief, Bureau of Service Quality

**Settlement Agreement**  
Docket No. 040062-TI

This Settlement Agreement (the "Settlement") is made and entered this 29<sup>th</sup> day of November 2004 (the "Effective Date") 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 Conference of the Commission;

WHEREAS, Staff's recommendations for a 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, Staff resubmitted recommendations for a PAA on May 6<sup>th</sup> and again on June 17<sup>th</sup>, 2004;

WHEREAS, the Company's representatives and Staff presented their respective positions concerning the terms of settlement to the Commission at several regular Agenda Conferences;

WHEREAS, at the regular Agenda Conference on October 25, 2004, the Commission issued its Order No. PSC-04-1029-SC-TI (the "ORDER") rejecting the Company's proposed settlement terms subject however to the submission of revisions to those terms as specified by the Commission in the ORDER;

WHEREAS, the Company has incorporated in this Settlement the revisions to the terms of settlement as specified in the ORDER; and

WHEREAS, this Settlement now satisfies the material issues of the ORDER;

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 ORDER 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 Staff Recommendation and/or the ORDER.

3. The Staff agrees that, in the absence of material new evidence relating to issues described in the ORDER 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 take any actions on its own motion against the Company, or its principals, concerning the matters that were the subject of the ORDER. 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, or 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 Settlement 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 Settlement 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 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:** Company will use an unaffiliated and independent company for third party verifications (the "TPV"), its selection subject to the approval of Staff. The script used by the TPV shall not use prerecorded "yes" and "no" questions. The TPV will use live attendants to verify and record customer orders of service. Company shall 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.

5. The Company will make a voluntary contribution to the Florida General Revenue Fund in the amount of \$151,500.00.

6. On the Effective Date, Company shall deposit Fifteen Thousand Dollars (\$15,000) into an escrow account to evidence its ability to make the first installment payment of its voluntary contribution. Within ten days of the Effective Date of this Settlement, Company shall pay the first installment of its voluntary contribution in the amount of \$15,150. 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.

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 shall make the payments of its voluntary contribution in accordance with the written instructions provided by Staff.

9. This Settlement shall satisfy and resolve all issues against the Company as are or may be contained in the ORDER.

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 the 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 public record.

15. If the Commission brings a judicial action to enforce the terms of this Settlement, Company will not contest the validity of the Settlement, and waives 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 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 will take such other actions as may be reasonably necessary to effectuate the objectives of this Settlement.

**[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]**

21. This Settlement may be signed in counterparts.

For the Staff of the  
Florida Public Service Commission

For New Century Telecom, Inc.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Karyn Bartel  
President

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date