# Attachment 3

## Florida PSC

## Deferral of Item on the Agenda for May 3, 2004, Regarding Staff Proposal to Impose a Fine of $420,000 on New Century Telecom for Slamming and Cramming

## &

## Attached Letter from Charles H. Helein to the Florida PSC dated April 29, 2004, in which Helein Asks the Florida PSC to Defer Action on the Staff's Proposal

**Dated April 30, 2004**

ORIGINAL

**REQUEST FOR CHANGE TO AGENDA CONFERENCE**
**HAND DELIVER**

Date of Request: April 30, 2004 Date of Agenda Conference: May 3, 2004 Item No. 8

Docket No.: 020645-TI, 031031-TI, 040062-TI, and 040289-TI Brief Title: Compliance Investigation for apparent violation of Rule 25-4.118, Local, Local Toll, or Toll Provider Selection.

Requested by: [ ] Staff [X] Other New Century Telecom, Inc. (040062-TI)

Please attach a copy of the written documentation filed (if other) (Name)

STAFF's Recommendation to Executive Suite (IF OTHER) [X] Approve Request [ ] Deny Request

ACTION REQUESTED [see APM 2.11]

[x] Defer Item to Agenda Scheduled Date: May 18, 2004

[ ] Change Order of Item or Take Up at Time Certain

[ ] Withdraw Item

[ ] Late Filed Recommendation (must be filed no later than 3:00 p.m. on the date approved for late filing) **A copy of the front page of the recommendation must be provided to CCA by 12 noon on the regular filing date for use as a place-holder during agenda preparation.**

[ ] Add Item to Published Agenda [ see Section 120.525(2), F.S.] - Issue an ADDENDUM and give Legal NOTICE

[ ] Add Emergency Item to Published Agenda [see Section 120.525 (3), F.S.] - Issue an ADDENDUM and Give Fair NOTICE

Concise explanation, justification or comments (attach additional sheet if necessary):

Legal Counsel for New Century Telecom, Inc. contacted staff and requested that Item No. 8 be deferred to provide to company with an opportunity to clarify some information contained the case background of staff's recommendation and explore the possibility of settlement. Staff recommends approval of the company's deferral request, however, the company has not submitted a settlement proposal. Staff informed the company that should the deferral be approved, settlement negotiations need to commence as soon as possible.

Signature (OPR Staff): Dale R Burp Initials (OPR Division Director or Designee): [signature]

Signature (Legal Staff): [signature] Initials (Legal Division Director or Designee): [signature]

**EXECUTIVE DIRECTOR:**

Recommendation to the Chairman's Office [✓] Approve Request [ ] Deny Request

Initials: [signature] Date: 4/30/4

Comments:

**CHAIRMAN's OFFICE:** [✓] Approve Request [ ] Deny Request

Initials: [signature] Date: 4-30-04

Executive Suite will send the original to the Division of Commission Clerk and Administrative Services and return a copy to the requesting staff after the Chairman's Office takes action on this request. Requesting staff should distribute copies to the Division Directors (OPR & OCR) and Attorney assigned to the docket.

PSC/EXD-1 (10/02)

DOCUMENT NUMBER-DATE
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**THE HELEIN LAW GROUP, P.C.**
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**FACSIMILE TRANSMISSION**
******* For Immediate Delivery *******

DATE: April 29, 2004

TO: Dale A. Buys
Division of Competitive Markets & Enforcement

COMPANY: Florida Public Service Commission

FAX: (850) 487-1716

REFERENCE: 535.99

FROM: Charles H. Helein

SENDER'S TELEPHONE: (703) 714-1301

SENDER'S FAX PHONE: (703) 714-1330

PAGES TRANSMITTED: 3, INCLUDING THIS SHEET.

IF THERE ARE ANY DIFFICULTIES IN RECEIVING THIS TRANSMISSION, PLEASE CONTACT (703) 714-1300 IMMEDIATELY. THANK YOU!

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MESSAGE OR SPECIAL INSTRUCTIONS:

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April 29, 2004

**Via Facsimile**

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

***Re: Proposed Agency Action***
***Docket Nos. 020645-TI, 031031-TI, 040062-TI and 040289-TI***

Ladies & Gentlemen:

In connection with the above-referenced docketed matter, on behalf of New Century Telecom, Inc. ("NCT") (Docket No. 040062-TI), it is respectfully requested that the Commission's consideration of the Proposed Agency Action, scheduled for Monday, May 3, 2004, be deferred.

NCT submits that a deferral will provide the time needed to clarify and amplify critical background facts that will aid in the Staff's processing and the Commission's consideration of the issues created by such facts. A deferral would also serve to expedite the proceeding by narrowing issues and permitting discussion of how best to resolve issues of concern to the Staff and the Commission, including exploring the possibility of settlement of some or all of the issues applicable to NCT and possibly the other respondents named in the Proposed Agency Action. In regard to the other respondents, the Staff is already aware that this firm does not represent those respondents. However, NCT will use the deferral to contact those respondents and determine whether they, too, would wish to engage in substantive efforts to address the issues in ways that may not involve formal processes. NCT would undertake to make contact and report the decisions of the respondents or have them report directly to the Staff on their positions.

It is submitted that the public interest would be served by a brief deferral, for it holds the promise that the remedial actions being proposed may be accomplished with less cost and time by informal versus formal processes.

Respectfully submitted,

Charles H. Helein