Decision **DRAFT DECISION OF ALJ KENNEY** (Mailed 3/23/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of New Century Telecom, Inc. (U-5912-C) for Approval of Stock Purchase Agreement and Related Transfer of Control.	Application 02-10-007 (Filed October 8, 2002)

OPINION DENYING THE APPLICATION AND IMPOSING A FINE

TABLE OF CONTENTS

Title **Page**

OPINION DENYING THE APPLICATION AND IMPOSING A FINE……..1
1. Summary....2
2. Background....3
   A. Initial Issues....3
   B. Evidence Submitted by CPSD....7
   C. Revocation of CPCN and Unauthorized Provision of Service....9
   D. NCT's Violations in Other Jurisdictions....9
3. Discussion....10
   A. Denial of the Application....10
   B. Orderly Termination of Service....10
   C. Collection of Regulatory Fees....11
   D. Fines for Violating Statutes, Commission Decisions, and Rule 1....11
      i. Summary of the Violations....11
         a. Failure to Remit Regulatory Fees....12
         b. Violation of § 702....13
         c. Violation of § 854(a)....13
         d. Violation of § 1013(a)....14
         e. Violation of Rule 1....14
         f. Alleged Violations of § 2889.5(a) and § 2890(a)....14
      ii. Imposition of Fines....15
4. Additional Measures to Protect the Public....19
5. Categorization and Need for Hearing....20
6. Comments on the Proposed Decision....20
7. Assignment of Proceeding....20

Findings of Fact....21
Conclusions of Law....22
ORDER....24

Attachment 1
Attachment 2
Attachment 3

1. Summary

Application (A.) 02-10-007 requests authority under Pub. Util. Code § 854(a)[1] to transfer ownership of New Century Telecom, LLC (NCT) from Kathleen Helein to Karyn Bartel. The transaction was consummated without Commission authorization in March 2003. NCT's authority to operate in California was revoked by Resolution T-16962, issued on October 27, 2005, for failure to (i) file an annual report, and (ii) remit regulatory surcharges and fees.

Today's Decision denies A.02-10-007 because NCT is no longer a public utility and, therefore, § 854(a) does not apply. Even if § 854(a) did apply, the Application would be denied because Bartel is unfit to own a public utility. Specifically, since Bartel's unauthorized acquisition of NCT, the company has violated Rule 1 of the Commission's Rules of Practice and Procedure (Rule 1), several Commission decisions, and parts of the Public Utilities Code.

Today's Decision orders NCT to pay a fine of $55,000 for these violations. To protect the public interest, Bartel is barred from owning, operating, or managing a public utility in California until the fine imposed by today's Decision is paid and past due surcharges and fees are remitted.

This Decision also finds that the Helein Law Group violated Rule 1 by providing false information to the Commission. In lieu of a fine, today's Decision requires the Helein Law Group to provide notice in all documents filed at the Commission that the Helein Law Group was found by today's Decision to have violated Rule 1. This requirement shall end after three years.

The record in this proceeding indicates that NCT continues to provide interexchange telephone service, despite having no authority to do so. This

[1] All section references are to the Public Utilities Code.

Decision directs Pacific Bell Telephone Company d/b/a AT&T California (f/n/a SBC California) and Verizon California, Inc. (Verizon) to stop routing calls to NCT. This Decision also directs the Commission's Telecommunications Division (TD) to mail a written notice to NCT's customers about the termination of service by NCT. AT&T California and Verizon are required to provide TD with the billing addresses of NCT's customers.

The participation of the Consumer Protection and Safety Division (CPSD) in this proceeding is appreciated. Without their participation, certain relevant facts might not have come to light.

This proceeding is closed.

2. Background

A. Initial Issues

Decision (D.) 97-12-003 authorized NCT to provide resold interexchange services in California. This Decision also required NCT to bill, collect, and remit several regulatory fees and surcharges (collectively, "fees").

NCT filed A.02-10-007 for authority under § 854(a) to transfer ownership of the company from Kathleen K. Helein to Karyn L. Bartel. There were no protests or other responses. The transfer was implemented without Commission authorization on March 31, 2003.[2] The unauthorized transfer of ownership violated § 854(a) which states, in relevant part, as follows:

> No person or corporation…shall…acquire, or control…any public utility…doing business in this state without first securing authorization to do so from the commission.

[2] Amendment to A.02-10-027 filed on May 13, 2004, p. 2.

On March 1, 2004, the assigned Administrative Law Judge (ALJ) issued a ruling that directed NCT to respond to the following inquiry:

> Are there any complaints alleging…significant wrongdoing with respect to Ms. Bartel or NCT that have been decided by, or currently pending at…the Federal Communications Commission (FCC), or other state commissions? If so, please identify and describe all such complaints.

NCT's legal counsel, the Helein Law Group, responded as follows on May 13, 2004:

> To NCT's knowledge, there have never been any complaints alleging…significant wrongdoing with respect to Ms. Bartel or NCT that have been decided by, nor are currently pending at…the Federal Communications Commission (FCC), or other state commissions.

At the time NCT submitted the above response, NCT was being investigated by the Florida Public Service Commission (Florida PSC) for 42 slamming violations.[3] Relevant documents from the Florida PSC are appended to today's Decision. These documents demonstrate that NCT and the Helein Law Group knew when they submitted the above response that NCT was being investigated by the Florida PSC for 42 slamming violations, which collectively constitute significant wrongdoing. Thus, NCT and the Helein Law Group knowingly made a false statement regarding a material fact when they informed the Commission that there were no pending complaints at another state commission alleging significant wrongdoing.

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[3] Slamming is the unauthorized switching of a customer's telephone service provider. Slamming is illegal in California pursuant to § 2889.5.

Making a false statement regarding a material fact violates Rule 1. This Rule states, in relevant part, as follows:

> Any person who signs a pleading or brief…or transacts business with the Commission, by such act…agrees to comply with the laws of this State…**and never to mislead the Commission or its staff by an artifice or false statement of fact or law**. (Emphasis added.)

On December 21, 2004, the assigned ALJ issued a ruling that provided notice of the ALJ's intent to prepare a draft decision that (1) denied A.02-10-007, and (2) fined NCT for violating § 854(a) and Rule 1. The Ruling also invited NCT to respond to the ALJ's Ruling and to request an evidentiary hearing.

NCT filed a response on January 31, 2005, that was prepared by the Helein Law Group. In its response, NCT denied that it made a false statement. NCT claimed that it believed the Florida PSC's investigation was an informal staff inquiry, not a formal complaint alleging significant wrongdoing. NCT also claimed that the Florida PSC's investigation "concerned actions and individuals that have no legal or other relationship to Ms. Bartel or her ownership and operation of NCT." NCT declined to request an evidentiary hearing, but it did request "negotiations…to avoid the expense of further proceedings and to determine a suitable voluntary contribution."

NCT's response on January 31, 2005, contained two false statements. First, the Florida PSC's investigation was not an informal staff inquiry as NCT claimed. Attachment 1 of today's Decision shows that the Florida PSC opened a docket in January 2004 to investigate NCT.[4] Attachment 2 shows that the Florida

[4] NCT was notified of the Florida PSC docket and was placed on the service list for the docket.

PSC was scheduled to consider at its meeting on May 3, 2004, a staff recommendation to require NCT to pay a fine of $420,000 for slamming. Attachment 3 shows that the Florida PSC deferred its staff's recommendation to a later meeting in response to a written request from the Helein Law Group dated April 29, 2004.[5] These documents demonstrate conclusively that:

(1) The Florida PSC conducted a formal investigation of NCT for slamming. NCT and the Helein Law Group knew on May 13, 2004, that NCT was being formally investigated for slamming;

(2) NCT and the Helein Law Group knowingly made a false statement on May 13, 2004, when they informed the Commission that there were no pending complaints in other jurisdictions alleging significant wrongdoing; and

(3) NCT and the Helein Law Group knowingly made a false statement on January 31, 2005, when they informed the Commission that NCT did not know on May 13, 2004, that NCT was being formally investigated by the Florida PSC.

The second falsehood in NCT's response submitted on January 31, 2005, is the statement therein that the Florida PSC's investigation "concerned actions and individuals that have no legal or other relationship to Ms. Bartel or her ownership and operation of NCT." Attachment 1 of today's Decision shows that the Florida PSC opened a docket in January 2004 for the express purpose of investigating NCT for slamming. NCT was owned by Bartel at the time. Thus, the Florida PSC's investigation concerned actions (i.e., slamming) that were directly related to NCT. Attachment 2 of today's Decision contains a summary of the Florida PSC staff's investigation of NCT. This document repeatedly states

[5] On January 26, 2005, the Florida PSC adopted a settlement in which NCT agreed to make a "voluntary contribution" of $151,500 and to implement procedures to prevent slamming.

that the staff had investigated both NCT and Bartel for slamming. Attachment 3 demonstrates that NCT and the Helein Law Group were aware that NCT and Bartel were being investigated by the Florida PSC for slamming.

B. Evidence Submitted by CPSD

On August 1, 2005, CPSD filed a motion for leave to submit a late-filed protest. The motion was granted by the assigned ALJ in a ruling issued on August 3, 2005. CPSD's protest alleges that NCT has engaged in unlawful activities in California, including slamming, cramming,[6] failure to pay regulatory fees, and unauthorized transfers of customers.

On September 2, 2005, CPSD submitted a sworn declaration by CPSD staff member James W. Howard. The declaration asserts that:

1. NCT has repeatedly slammed and crammed California consumers. CPSD provided the following information to support its assertion:
    a. The Commission's Consumer Affairs Branch (CAB) received 36 informal slamming complaints against NCT in 2003 and 98 informal slamming complaints in 2004.
    b. The preferred inter-exchange carrier (PIC) reports submitted by AT&T California show that AT&T California received 241 informal slamming complaints against NCT during 2003. This represents a 10% complaint ratio based on the 2,404 PIC changes reported by AT&T California for NCT during 2003. AT&T California's PIC reports show that NCT did not acquire any new subscribers in 2004.
    c. The cramming complaint reports submitted by two billing aggregators (Billing Concepts, Inc. and ILD Telecommunications, Inc.) used by NCT show that these two aggregators received 1,364 informal cramming complaints against NCT during 2003, 4,718 complaints in 2004, and 2,199 complaints through June 30, 2005.

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[6] Cramming occurs when customers are billed for telephone services they did not authorize. Cramming is illegal pursuant to § 2890(a).

2. NCT failed to remit all regulatory fees. CPSD analyzed the quarterly cramming reports submitted by Billing Concepts and ILD Telecommunications, which summarize the monthly amounts billed for each client. Based on the amounts billed, CPSD determined that NCT should have remitted $266,739 for the period of January 2003 through May 2005. However, Commission records show that NCT's actual remittances for this period were $92,513. CPSD calculated the net amount of regulatory fees owed by NCT is $174,226.
3. NCT accepted the transfer of California long-distance subscribers from the defunct Miko Telephone Communications, Inc. (U-6582-C & U-6792-C) without Commission authorization. This information was obtained via a data response provided by NCT on April 8, 2005.

On September 12, 2005, the Helein Law Group notified CPSD by email that NCT was withdrawing A.02-10-007. The email denied any wrongdoing, but did not provide any information to refute CPSD's declaration. The email also stated that NCT had ceased marketing as of January 1, 2005, that NCT was going out of business, and that NCT could no longer afford to participate in the instant proceeding or to transfer its customers to another carrier.

CPSD forwarded the Helein Law Group's email to the assigned ALJ. On September 12, 2005, the assigned ALJ notified the Helein Law Group by email that NCT could not unilaterally withdraw A.02-10-007, and that NCT would have submit a formal request to do so. The Helein Law Group responded that it would submit a formal request to withdraw A.02-10-007, but it never did so.

On September 20, 2005, the assigned ALJ notified the parties of the ALJ's intent to prepare a draft decision that: (1) denied A.02-10-007; (2) ordered NCT to transfer its customers to another carrier; (3) ordered NCT to remit past-due regulatory fees, and (4) penalized NCT $50,000 to $100,000 for (i) violating § 854 and Rule 1, (ii) failure to remit regulatory fees, and (iii) the reasons set forth in CPSD's protest. The ALJ also invited the parties to submit comments on the ALJ's proposed course of action and to request an evidentiary hearing.

CPSD filed comments on September 29, 2005, that expressed full support for the ALJ's proposed course of action. NCT did not submit comments.

C. Revocation of CPCN and Unauthorized Provision of Service

On October 27, 2005, the Commission issued Resolution T-16962, which revoked the certificates of public convenience and necessity (CPCNs) for three carriers, including NCT, for failure to file an annual report and to remit regulatory fees as required by D.93-05-010, Ordering Paragraph 4.

At the request of the ALJ, the Commission's Telecommunication Division (TD) asked AT&T California and Verizon if NCT were still providing service. TD reported that (1) AT&T California's records showed that NCT was the designated PIC for 23 lines as of November 15, 2005, and (2) Verizon's records showed that NCT was the designated PIC for 265 lines as of November 23, 2005.[7] Thus, NCT continued to provide service after its CPCN was revoked in October 2005.

D. NCT's Violations in Other Jurisdictions

A search of the Lexis database revealed that the Florida PSC and the Federal Communications Commission (FCC) have each investigated slamming complaints against NCT. The Florida investigation was described previously. With regards to the FCC, Lexis shows that the FCC has upheld 27 slamming complaints against NCT.[8] All of the slamming complaints investigated by the Florida PSC and the FCC occurred after Bartel acquired NCT.

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[7] Verizon's comments on the proposed decision indicate that the number of lines PIC'd to NCT has declined since November 2005, but Verizon did not quantify the decline.

[8] FCC Orders DA 04-803, DA 04-860, DA 04-1461, DA 04-1973, DA 04-2313, DA 04-2618, DA 04-2626, DA 04-2739, DA 04-2834, DA 04-2849, DA 04-3068, DA 04-3073, DA 04-3296, DA 04-3310, DA 04-3366, DA 04-3634, DA 05-209, DA 05-233, DA 05-972, DA 05-979, DA 05-1384, DA 05-1385, DA 05-1411, DA 05-1418, DA 05-2554, & DA 05-3058.

3. Discussion

A. Denial of the Application

Application 02-10-007 requests authority under § 854(a) to transfer control of NTC. Section 854(a) states, in relevant part, as follows:

> No person or corporation…shall…acquire, or control…any public utility organized and doing business in this state without first securing authorization to do so from the commission…Any…acquisition, or control without that prior authorization shall be void and of no effect.

NCT is no longer a public utility in California pursuant to Resolution T-16962. Therefore, because NCT is not a public utility, § 854(a) does not apply, and A.02-10-007 must be denied.[9] But even if NCT were a public utility, we would deny the Application because Bartel is manifestly unfit to own a public utility as demonstrated by NCT's violations of the Public Utilities Code, Commission decisions, and Rule 1 found by today's Decision, *infra*, that have occurred since Bartel acquired NCT.

B. Orderly Termination of Service

AT&T California and Verizon report that NCT is the designated PIC for 288 lines, even though NCT no longer has a CPCN. It is unlawful for NCT to provide service without a CPCN. Therefore, we will require AT&T California and Verizon to remove NCT as the PIC for the lines in question beginning 60 days after the effective date of today's Decision, regardless of any existing PIC freezes that may be on the customers' accounts.[10]

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[9] The unauthorized transfer of control of NCT that occurred in March 2003 is void and of no effect pursuant to § 854(a).

[10] A PIC freeze prevents a change in the selected long-distance carrier. The purpose of the PIC freeze is to prevent slamming.

So that NCT's customers are informed about the termination of service, we will require the Commission's Telecommunications Division (TD) to send a written notice to the billing addresses for the lines served by NCT that contains the following information:

- Calls will no longer be routed to NCT starting 30 days from the date of the notice.
- The customer needs to switch to another interexchange carrier within 30 days to avoid an interruption of interexchange service.

The notice shall be reviewed and approved by the Commission's Public Advisor. TD shall mail the approved notice to NCT's customers no later than 30 days from the effective date of today's Decision. TD shall also file a copy of the mailed notice at the Commission's Docket Office. So that TD can mail the notices, AT&T California and Verizon shall provide TD with the billing addresses for the lines PIC'd to NCT.

C. Collection of Regulatory Fees

The information provided by CPSD shows that NCT has failed to remit $174,225 of regulatory fees for the period of January 2003 through May 2005. NCT shall remit these fees to the Director of TD no later than 30 days from the effective date of today's Decision. Legal Division should take any steps it deems appropriate to collect unremitted fees.

D. Fines for Violating Statutes, Commission Decisions, and Rule 1

i. Summary of the Violations

The record of this proceeding demonstrates that NCT has violated several statutes, Commission decisions, and Rule 1. These violations are summarized below.

a. Failure to Remit Regulatory Fees

NCT is required to bill, collect, and remit several regulatory fees to fund public programs. The following Table identifies the specific regulatory fees that NCT failed to remit and the statutes and Commission decisions that require NCT to bill, collect, and remit these fees:

Regulatory Fee	Requirement to Bill, Collect, and Remit Regulatory Fee	
	Statute	**Commission Decision**
Universal Lifeline Telephone Service	§§ 270 *et seq.*, and 879	D.97-12-003 Resolutions T-16917 & T-16795
California Relay Service & Communications Device Fund	§§ 270 *et seq.*, and 2881	D.97-12-003 Resolutions T-16918 & T-16747
California High Cost Fund A (CHCF-A)	§§ 270 *et seq.*, and 739.3	D.97-12-003 Resolutions T-16916 & T-16793
CHCF-B	§§ 270 *et seq.*, and 739.3	D.97-12-003 Resolutions T-16898 & T-16794
California Teleconnect Fund	§§ 270 *et seq.*	D.97-12-003 Resolution T-16833
Calif. Public Utilities Commission	§§ 431 - 435	D.97-12-003 Resolutions M-4813 & M-4810

CPSD's sworn declaration represents that NCT failed to remit $174,225 of regulatory fees for the period of January 1, 2003, through May 2005. NCT denies the allegation, but provided no information to refute CPSD. In light of NCT's violations of Rule 1 addressed elsewhere in today's Decision, we accord little weight to NCT's denial. Accordingly, we find that NCT has failed to remit

$174,225 of regulatory fees in violation of the previously identified statues and Commission decisions.[11]

b. Violation of § 702

Section 702 states, in relevant part, as follows:

> **§ 702**: Every public utility shall obey…every order, decision, direction, or rule made or prescribed by the commission…in any way relating to…its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.

NCT violated § 702 by failing to remit regulatory fees as required by several Commission decision, operating after its CPCN was revoked by Resolution T-16962, and submitting false information to the Commission in violation of Rule 1.

c. Violation of § 854(a)

Section 854(a) states, in relevant part, as follows:

> **§ 854(a)**: No person or corporation…shall…acquire, or control…any public utility…doing business in this state without first securing authorization to do so from the commission.

NCT violated § 854(a) when ownership of the company was transferred from Kathleen Helein to Karyn Bartel in March 2003 without Commission authorization.

[11] There is insufficient information in the record of this proceeding to determine if NCT billed and collected the regulatory fees and, if so, unlawfully kept these fees.

d. Violation of § 1013(a)

Section 1013(a) states, in relevant part, as follows:

> **§ 1013(a)**: A telephone corporation operating in this state shall either have a [CPCN] or be registered under this section or be a telephone corporation authorized to operate in California without a [CPCN].

NCT violated § 1013(a) by continuing to operate after its CPCN was revoked on October 27, 2005, by Resolution T-16962.[12]

e. Violation of Rule 1

Rule 1 states, in relevant part, as follows:

> **Rule 1**: Any person who signs a pleading or brief…or transacts business with the Commission…agrees to comply with the laws of this State and…[to] never to mislead the Commission or its staff by an artifice or false statement of fact or law.

As described previously, NCT violated Rule 1 by (1) failing to comply with certain statutes, and (2) providing false information to the Commission on two occasions regarding matters that are material and relevant to this proceeding.

f. Alleged Violations of § 2889.5(a) and § 2890(a)

Sections 2889.5(a) and 2890(a) state, in relevant part, as follows:

> **§ 2889.5(a)**: No telephone corporation, or any person, firm, or corporation representing a telephone corporation, shall make any change or authorize a different telephone corporation to make any change in the provider of any telephone service for which competition has been authorized of a telephone subscriber.

[12] NCT is not registered to operate in California and is not authorized to operate in California without a CPCN or registration.

> **§ 2890(a)**: A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized.

CPSD provided evidence that the Commission's CAB received 134 informal slamming complaints against NCT, AT&T California received 241 informal slamming complaints against NCT, and two billing aggregators received 8,271 informal cramming complaints against NCT. Although the evidence provided by CPSD is troubling, we have previously held that informal complaints require corroborating evidence to establish that slamming or cramming has occurred.[13] No such corroborating evidence was provided. Accordingly, we decline to conclude that NCT violated § 2889.5(a) or § 2890(a).[14]

ii. Imposition of Fines

The Commission is authorized by § 2107 to levy a fine of $500 to $20,000 for each of the previously described violations. This statute states as follows:

> **§ 2107**: Any public utility which violates or fails to comply with any provision of the Constitution of this state or of this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars ($500), nor more than twenty thousand dollars ($20,000) for each offense.

We conclude that NTC should be fined for the previously described violations pursuant to our authority under § 2107. This is because any violation

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[13] D.05-06-033, Conclusion of Law 5; D.04-09-062, 2004 Cal. PUC Lexis 453, *65.

[14] As noted earlier, the FCC determined that NCT engaged in 27 instances of slamming, and the Florida PSC staff found 42 slamming violations. This information, while troubling, does not corroborate the slamming and cramming reported in California.

of statutes, Commission decisions, and Rule 1, regardless of the circumstances, is a serious offense that should be subject to fines. Further, as the Commission has previously recognized, "The primary purpose of imposing fines is to prevent future violations by the wrongdoer and to deter others from engaging in similar violations.[15]" Therefore, to deter future violations by NCT and others, it is necessary to fine NCT for the violations found by today's Decision.

To determine the amount of the fine, we will rely on the following criteria adopted by the Commission in D.98-12-075[16]:

> **Physical harm**: The most severe violations are those that cause physical harm to people or property, with violations that threatened such harm closely following.
>
> **Economic harm**: The severity of a violation increases with (i) the level of costs imposed on the victims of the violation, and (ii) the unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in setting the fine. The fact that economic harm may be hard to quantify does not diminish the severity of the offense or the need for sanctions.
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> **Harm to the Regulatory Process**: A high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements.
>
> **The Number and Scope of Violations**: A single violation is less severe than multiple offenses. A widespread violation that affects a large number of consumers is a more severe than one that is limited in scope. For a continuing violation, § 2108 counts each day as a separate offense.
>
> **The Utility's Actions to Prevent a Violation**: Utilities are expected to take reasonable steps to ensure compliance with

[15] D.01-08-058, *mimeo*. at 80, and D.04-09-062, *mimeo*. at 62.

[16] D.98-12-075, 84 CPUC 2d at 188-190.

applicable laws and regulations. The utility's past record of compliance may be considered in assessing any penalty.

The Utility's Actions to Detect a Violation: Utilities are expected to diligently monitor their activities. Deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor. The level and extent of management's involvement in, or tolerance of, the offense will be considered in determining the amount of any penalty.

The Utility's Actions to Disclose and Rectify a Violation: Utilities are expected to promptly bring a violation to the Commission's attention. What constitutes "prompt" will depend on circumstances. Steps taken by a utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

Need for Deterrence: Fines should be set at a level that deters future violations. Effective deterrence requires that the size of a fine reflect the financial resources of the utility.

Constitutional Limits on Excessive Fines: The Commission will adjust the size of fines to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.

The Degree of Wrongdoing: The Commission will review facts that tend to mitigate the degree of wrongdoing as well as facts that exacerbate the wrongdoing.

The Public Interest: In all cases, the harm will be evaluated from the perspective of the public interest.

Consistency with Precedent: Any decision that levies a fine should address previous decisions that involve reasonably comparable factual circumstances and explain any substantial differences in outcome.

Several of the above criteria suggest that only a modest fine is warranted. In particular, there is no evidence that NCT's violations caused any physical harm to people or property. In addition, the number and scope of the violations is relatively small. Further, based on NCT's representation that it is going out of

business and cannot afford the cost of transferring its customers to another carrier, it appears that NCT's financial resources are limited and diminishing.

On the other hand, several criteria weigh in favor of a larger fine. First, NCT failed to remit $174,225 of regulatory fees. Because the cost of the public programs funded by the fees did not change, NCT's failure to remit the fees had to be made up by other Californians. Thus, NCT's actions inflicted economic harm of at least $174,225. Although today's Decision orders NCT to remit $174,225 of regulatory fees, which would reduce or eliminate the economic harm to others, we are doubtful that NCT will do so.[17]

Second, NCT knowingly provided false information to the Commission regarding issues that are material and relevant to this proceeding. The submittal of false information causes substantial harm to the regulatory process, which cannot function effectively unless participants act with integrity at all times.

Finally, there is no evidence that NCT made any effort to prevent, detect, disclose, or rectify the violations.

There are several decisions that involve reasonably comparable factual circumstances. In the following decisions, the Commission imposed fines that ranged from $2,500 to $7,500 for violations of § 854(a) involving non-dominant telecommunications carriers like NCT: D.04-04-017, D.04-04-016, D.03-05-033, D.00-12-053, and D.00-09-064. In D.05-02-001, the Commission imposed a fine of $45,350 for slamming, cramming, failure to remit regulatory fees, and violating Rule 1. In D.03-01-079, the Commission imposed a fine of $35,000 for violating Rule 1. And in D.01-08-019, the Commission imposed a fine of $10,000 for each Rule 1 violation found by the decision

[17] As noted previously, NCT's counsel represents that NCT is going out of business.

Based on the facts of this case and the criteria established by D.98-12-075, we conclude that NCT should be fined $5,000 for violating § 854(a), $40,000 for multiple violations of Rule 1, and $10,000 for the other violations found by today's Decision. These fines are meant to deter future violations by NCT and others. The fines levied by today's Decision do not differ substantially from those levied by previous decisions addressing reasonably comparable circumstances. We emphasize that the fines we adopt today are tailored to the unique facts before us in this proceeding. We may impose larger fines in other proceedings if the facts so warrant.

Within 30 days from the effective date of this Order, NTC shall remit to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, a check for $55,000 made payable to the State of California's General Fund. The number of this Decision shall be shown on the face of the check.

4. Additional Measures to Protect the Public

NCT has violated several statutes, Commission decisions, and Rule 1. To protect the public from further unlawful actions, we will bar NCT from providing regulated telecommunications services in California until (1) all past-due regulatory fees owed by NCT have been paid, and (2) the fines levied by this Decision have been paid. Likewise, we will bar Karyn Bartel from owning, operating, or managing a public utility providing service in California until (1) all past-due regulatory fees owed by NCT have been paid, and (2) the fines levied by this Decision have been paid.

The record shows that the Helein Law Group aided and abetted violations of Rule 1. Consequently, the firm cannot be trusted, and those who rely on information provided by the Helein Law Group should be warned. To this end, we will require that documents filed by the Helein Law Group in any current or

future proceeding to state in a prominent manner that the firm was found to have violated Rule 1 by today's Decision. Further, the Helein Law Group shall amend any applications currently pending at the Commission to include the aforementioned warning.[18] This requirement to provide the warning shall end three years from the effective date of today's Decision.

5. Categorization and Need for Hearing

In Resolution ALJ 176-3098, dated October 24, 2002, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. NTC did not request a hearing when asked. Based on the record, we affirm that this is a ratesetting proceeding and that hearings are not necessary.

6. Comments on the Proposed Decision

The proposed decision of the assigned ALJ was mailed to the parties in accordance with § 311(g) and Rule 77.1. Opening comments regarding the proposed decision were timely filed by CPSD, AT&T California, and Verizon. There were no reply comments. The filed comments have been reflected, as appropriate, in the final decision adopted by the Commission.

7. Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner and Timothy Kenney is the assigned ALJ in this proceeding.

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[18] It appears that the Helein Law Group filed A.06-03-019 for a CPCN for Transcend Multimedia, LLC to provide resold and leased facilities-based competitive local exchange services. Commission records indicate that there may also be several pending registration applications filed by the Helein Law Group.

Findings of Fact

1. D.97-12-003 authorized NTC to provide resold telecommunications services in California.

2. A.02-10-007 requests authority under § 854(a) to transfer ownership of NTC from Kathleen Helein to Karyn Bartel. The transfer was consummated without Commission authorization on March 31, 2003.

3. NCT failed to remit $174,225 of regulatory fees.

4. NCT's CPCN was revoked by Resolution T-16962.

5. NCT continued to provide service after the revocation of its CPCN.

6. NCT provided false information to the Commission on two occasions in this proceeding regarding material and relevant matters. NCT's legal counsel, the Helein Law Group, aided and abetted the provision of false information.

7. Section 854(a) requires Commission authorization to transfer control of a public utility. Any transfer of control without Commission authorization is void and of no effect pursuant to the statute.

8. § 2107 authorizes the Commission to levy a fine of $500 to $20,000 for each violation of Commission decisions, Rules, and the Public Utilities Code.

9. D.98-12-075 adopted the criteria identified in the body of this Decision for determining the amount of a fine.

10. On September 12, 2005, the Helein Law Group notified CPSD by email that (i) NCT was withdrawing A.02-10-007, (ii) NCT had ceased marketing as of January 1, 2005, and was going out of business, and (iii) NCT could no longer afford to participate in the instant proceeding or to transfer its customers to another carrier.

11. NCT had notice and an opportunity to request an evidentiary hearing, but did not do so.

Conclusions of Law

1. This is a ratesetting proceeding.

2. A hearing is not necessary.

3. The unauthorized transfer of control of NCT that occurred in March 2003 is void and of no effect pursuant to § 854(a).

4. Because NCT's CPCN was revoked by Resolution T-16962, NCT is not a public utility. Consequently, § 854(a) no longer applies to NCT.

5. Application 02-10-007 should be denied because § 854(a) no longer applies to NCT. Even if § 854(a) did apply, Bartel is unfit to own a public utility due to the numerous violations of statues, Commission decisions, and Rule 1 that have occurred since Bartel acquired NCT without Commission authorization.

6. TD should mail a written notice to NCT's customers that contains the information specified in the body of this Decision. The notice should be reviewed and approved by the Commission's Public Advisor prior to mailing.

7. AT&T and Verizon should provide to TD the billing address for the lines currently PIC'd to NCT so that TD can mail the notice described in the previous Conclusion of Law.

8. The transfer of control of NTC from Helein to Bartel on March 31, 2003, without Commission authorization violated § 854(a).

9. NCT violated § 702 by failing to remit $174,225 of regulatory fees as required by the statutes and Commission decisions identified in the body of today's Decision.

10. NCT should remit $174,225 of regulatory fees.

11. NCT violated § 1013(a) and § 702 by operating without a CPCN.

12. NCT and the Helein Law Group violated Rule 1 by (i) knowingly providing false information to the Commission on two occasions, and (ii) failing to comply with the laws of this State identified in Conclusions of Law 7, 8, & 10.

13. Section 2107 authorizes the Commission to levy a monetary penalty when a public utility violates or fails to comply with any statute, Commission decision, or requirement where a penalty has not otherwise been provided.

14. The violations identified in Conclusions of Law 7, 8, 10, and 11 are subject to monetary penalties under § 2107.

15. To deter future violations by NTC and others, NTC should be fined for violating §§ 702, 854(a), 1013(a), Rule 1, and several Commission decisions. The amount of the fine should be based on the criteria set forth in D.98-12-075.

16. As discussed in the body of this Decision, the application of the criteria in D.98-12-075 to the facts of this case indicates that NTC should pay a fine of $5,000 for violating § 854(a), $40,000 for multiple violations of Rule 1, and $10,000 for the other violations found by today's Decision.

17. NCT should be barred from providing regulated telecommunications services in California until (i) all past-due regulatory fees owed by NCT are paid, and (ii) the fines levied by this Decision are paid.

18. Karyn Bartel should be barred from the owning, operating, or managing a public utility providing service in California until (i) all past-due regulatory fees owed by NCT are paid, and (ii) the fines levied by this Decision are paid.

19. Because the Helein Law Group cannot be trusted to provide truthful information, it is necessary to place a cautionary notice on documents filed at the Commission by the Helein Law Group. To this end, any documents filed at the Commission by the Helein Law Group during the next three years should state in a prominent manner that the firm was found by today's Decision to have

violated Rule 1 by providing false information to the Commission. The Helein Law Group should also amend any pending documents, such as applications, to comply with this requirement.

20. The following Order should be effective immediately so that the fines and protective measures adopted therein may take effect as soon as possible.

O R D E R

IT IS ORDERED that:

1. Application (A.) 02-10-007 is denied.

2. New Century Telecom, Inc. (NTC) shall pay a fine of $55,000 for the violations of the Public Utilities Code, Commission decisions, and Rule 1 described in the body of this Order. Within 30 days from the effective date of this Order, NTC shall remit to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, a check for $55,000 made payable to the State of California's General Fund. The number of this Decision shall be shown on the face of the check.

3. NCT shall immediately pay to the Director of the Commission's Telecommunications Division $174,225 in overdue regulatory surcharges and fees for the period of January 1, 2003, through May 2005.

4. AT&T California and Verizon shall remove NCT as the preferred interexchange carrier (PIC) from affected customer accounts regardless of any existing PIC freezes that may be on the customers' accounts, beginning 60 days from the effective date of this Order.

5. Within 30 days from the effective date of this Order, the Commission's Telecommunications Division (TD) shall mail to the customers being illegally served by NCT a written notice containing the information specified in the body

of this Order. The notice shall be reviewed and approved by the Commission's Public Advisor prior to mailing.

6. Within in 10 days from the effective date of this Order, Pacific Bell Telephone Company d/b/a/ AT&T California and Verizon California (Verizon) shall provide to TD the billing addresses for the lines PIC'd to NCT at that time so that TD can mail the notice described in the previous Ordering Paragraph.

7. NCT shall not provide regulated telecommunications services in California until (i) $174,225 of regulatory surcharges and fees owed by NCT are paid, and (ii) the fines levied by this Order are paid.

8. Karyn L. Bartel shall not own, operate, or manage a public utility serving California until (i) $174,225 of regulatory surcharges and fees owed by NCT are paid, and (ii) the fines levied by this Order are paid.

9. Any future documents filed at the Commission by the Helein Law Group, LLC, during the three-year period beginning on the effective date of this Order must state in a prominent manner that today's Decision found that the Helein Law Group, LLC, violated Rule 1 by providing false information to the Commission. The Helein Law Group shall also amend any pending documents, such as applications, to comply with this requirement.

10. Application 02-10-007 is closed.

This Order is effective today.

Dated _____, at San Francisco, California.

Attachment 1

Florida PSC

Request to Establish Docket

Dated January 21, 2004

REQUEST TO ESTABLISH DOCKET
(Please Type)

Date	January 21, 2004	Docket No.	04 0062- TI
1. Division Name/Staff Name:	Competitive Markets & Enforcement / Buys		
2. OPR:	CMP		
3. OCR:	CAF /		
4. Suggested Docket Title:	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.		

5. Suggested Docket Mailing List (attach separate sheet if necessary)

A. Provide NAMES OR ACRONYMS ONLY if a regulated company.

B. Provide COMPLETE NAME AND ADDRESS for all others. (Match representatives to companies.)

1. Parties and their representatives (if any):

New Century Telecom, Inc. (T1427)	

2. Interested persons and their representatives (if any):

6. Check one:

✔ Documentation is attached.

____ Documentation will be provided with recommendation.

FSC\CCA010-C (Rev 02/02)

DOCUMENT NUMBER-DATE
00895 JAN 21 ≈
FPSC-COMMISSION CLERK

Attachment 2

Florida PSC

Staff Memorandum Recommending that NCT Be Fined $420,000. This Memorandum Was Placed on the Agenda for Formal Adoption by the Florida PSC

Dated April 21, 2004

Banc
Melson

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-

COMMISSION CLERK

DATE: April 21, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Buys, M. Watts)
Office of Standards Control & Reporting (Lowery)
Office of the General Counsel (L. Fordham, Rojas, Teitzman)

RE: Docket No. 020645-TI – Compliance investigation of UKI Communications, Inc. for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, and Toll Provider Selection.

Docket No. 031031-TI – Compliance investigation of Miko Telephone Communications, Inc. for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection.

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.

Docket No. 040289-TI – Compliance investigation of Optical Telephone Corporation for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection.

AGENDA: 05/03/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\031031.RCM.DOC

DOCUMENT NUMBER-DATE
04752 APR 21 8
FPSC-COMMISSION CLERK

Case Background

Staff's recommendations for Docket Nos. 020645-TI, 031031-TI, 040062-TI, and 040289-TI are combined in one memorandum to demonstrate apparent relationships between Miko Telephone Communications, Inc. (Miko), New Century Telecom, Inc. (New Century), Optical Telephone Corporation (Optical), and UKI Communications, Inc (UKI). Miko, New Century, and Optical are charged with apparent violations of Rule 25-4.118, Florida Administrative Code (F.A.C.), Local, Local Toll, or Toll Provider Selection, also referred to as slamming. UKI is charged with failing to comply Proposed Agency Action Order PSC-03-0990-PAA-TI, issued September 3, 2003, made final and effective by Consummating Order PSC-03-1078-CO-TI, issued September 30, 2003, in which the company's offer to settle apparent slamming violations and pay regulatory assessment fees was approved by the Commission.

In addition to the companies named above, staff discusses other interexchange telecommunications companies (IXCs) that have been or are currently under investigation by staff for slamming. The companies are America's Tele-Network Corp. (ATN), WebNet Communications, Inc. (WebNet), World Communications Satellite Systems, Inc. (WCSS), America's Digital Satellite Telephone, Inc. (ADST), and OLS, Inc. (OLS). These companies appear to have a current or past relationship with the companies that are subjects of the recommendations presented herein.

During its investigation of all the companies named above, staff obtained various documents and information that suggest these companies may be linked through financial, managerial, and operational associations. All of these companies are switchless re-sellers of long distance service and have been or are currently under investigation by staff for slamming.

The following lists a key person associated with each company and the status of each company's registration with the Commission:

ATN – Mr. John W. Little, President: ATN's IXC registration and tariff and CLEC certificate were involuntarily cancelled by the Commission as part of a settlement offer to resolve the company's apparent slamming violations in Dockets Nos. 001066-TI and 001813-TX (Order No. PSC-01-1035-AS-TP, issued April 27, 2001).

WebNet – Mr. Marc Howard Lewis, President: WebNet's IXC registration and tariff was involuntarily cancelled by the Commission, effective February 8, 2002, as part of a settlement to resolve the company's apparent slamming violations in Docket No. 001109-TI (Order No. PSC-01-2432-PAA-TI, issued December 13, 2001).

WCSS – Ms. Caterina Bergeron, President: WCSS's IXC registration and tariff became effective on October 8, 2001, and is still current.

ADST – Mr. Damian Cipriani, President: ADST requested voluntary cancellation of its IXC registration and tariff in a letter addressed to the Commission dated December 15, 2003. In Docket No. 040298-TI, the company's cancellation request was acknowledged on April 5, 2004, and the company's IXC registration was cancelled with an effective date of December 16, 2003.

Optical – Mr. Mark Frost, President: Optical's IXC registration and tariff became effective on September 14, 2001, and is still current

OLS – Ms. Geri Buffa (aka Clary, Eubanks, Duty), President: OLS's IXC registration and tariff became effective on October 7, 1997, and is still current.

Miko – Ms. Margaret Corrie, President: Miko's IXC registration and tariff became effective on September 26, 2001, and is still current.

New Century – Ms. Karyn Bartel, President: New Century's IXC registration and tariff became effective on March 20, 1996, and is still current.

UKI – Mr. Guiseppe Vitale, President: UKI's IXC registration and tariff was cancelled by the Commission effective December 1, 2003, in Docket No. 020645-TI (Order No. PSC-03-0990-PAA-TI).

Financial Connection

On February 19, 2003, Commission staff sent a Subpoena Duces Tecum to Intellicall Operator Services, Inc. d/b/a ILD (ILD) seeking information regarding links between the companies. ILD responded in March 2003, and provided staff with a copy of a cross-corporate guarantee and other documents (Attachment A) that show the following relationships:

- WebNet, UKI, ADST, WCSS, and Miko are affiliates of ATN.
- WebNet, ADST, WCSS, Miko, ATN, Optical and New Century are parties to a cross-corporate guarantee with each another. UKI is listed on the agreement but it was not signed by a UKI representative.
- The address to which ILD remits payment to Miko, WCSS and Optical are not the companies' respective corporate addresses, but the corporate address of ATN; 720 Hembree Place, Roswell, Georgia, 30076.

The cross-corporate guarantee is a financial agreement executed by WebNet, ADST, WCSS, Miko, ATN, Optical and New Century in December 2002. In the agreement, each company unconditionally guaranteed to ILD the prompt repayment of advances and discharge when due of each and all obligations and indebtedness of the companies for advances and/or services supplied by ILD. Simply, each company promised to pay the debts owed to ILD by any of the other companies included in the agreement. Hence, it appears that WebNet, ADST, WCSS, Miko, ATN, Optical and New Century are connected financially by sharing expenses through the cross corporate guarantee agreement with ILD.

Managerial Connection

UKI and New Century - In its response to staff's Subpoena Duces Tecum, ILD provided other documents that suggest additional associations between the companies. The 1st Billing and Collections Agreement (in Attachment A), made on May 19, 2000, between UKI and ILD, appears to list Karyn Bartel as UKI's contact person to receive notices in connection with the agreement. Thus, it seems reasonable to assume that Karyn Bartel was associated with UKI in some management capacity before becoming president of New Century.

Miko, Optical, and WCSS - Miko, Optical, and WCSS each sent a letter, dated January 22, 2003, to ILD requesting to cancel the cross-corporate financial guarantee agreement between each of the companies and UKI. Each of the letters appears to have been signed by the companies' respective presidents. The letters are identical except for the letterhead. Staff believes the letters demonstrate the companies may share the same management because the letters were created using the same language, format, and date.

UKI and WCSS - In UKI's application for Approval to Offer, Render, Furnish, or Supply Telecommunications Services as a Reseller of Services to the Public in the State of Arkansas (Attachment B), Caterina Bergeron appears to have signed as the official administering the oath for the Verification of Giuseppe Vitale affirming he is the president of UKI, and is dated November 19, 1999. In addition, Caterina Bergeron appears to have signed as the notary on UKI's Articles of Incorporation in the State of Nevada, dated August 4, 1999. Staff believes these documents suggest that Caterina Bergeron was affiliated in some capacity with UKI.

WebNet and WCSS - Marc Lewis, president of Webnet, appears to have signed as endorser for Caterina Bergeron's character in an application for Notary Public Commission in Fulton County, Georgia, submitted by Caterina Bergeron (Attachment C). The business address listed for Caterina Bergeron is 720 Hembree Place, Roswell, Georgia; ATN's address. The document was signed February 4, 1997. Staff believes that this document suggests that the president of Webnet, Marc Lewis, and the president of WCSS, Caterina Bergeron, are associates, and that Caterina Bergeron's place of business during that time was that of ATN.

UKI and Optical - Mark Frost, president of Optical, included his resume (Attachment D) in Optical's application for an IXC certificate submitted to the Commission on May 30, 2001. His resume stated that from 1999 to present, he was in charge of maintaining and updating records for customer service at UKI. Thus, it appears that Mark Frost may have been simultaneously employed by UKI and president of Optical.

Optical and WCSS - Caterina Bergeron, president of WCSS, appears to have notarized Optical's Application for a Certificate of Public Convenience and Necessity to Offer Long Distance Telecommunications Service by a Reseller in North Carolina (Attachment E). The application was signed by Marc Frost and dated June 26, 2001. WCSS was incorporated in the State of Virginia on April 13, 2000, hence, a reasonable person would not expect the president of WCSS to be involved in the application process of its apparent competitor.

WCSS and ADST - Caterina Bergeron appears to have signed as the official administering the oath for the Verification of Damien Cipriani affirming he is the president of ADST, dated June 27, 2001 in ADST's application for Approval to Offer, Render, Furnish, or Supply Telecommunications Services as a Reseller of Services to the Public in the State of Arkansas (Attachment F). Also included in the application is a copy of the Articles of Incorporation for

ADST in the State of Nevada. Damian Cipriani appears to be listed as the Director, Rodney Harrison appears to be listed as the Incorporator, and Caterina Bergeron appears to be listed as the Notary. The document is dated February 3, 2000. Staff believes that these documents suggest that Damian Cipriani, Caterina Bergeron, and Rodney Harrison were associates as early as February 3, 2000.

FVC - Rodney Harrison is the sole owner of Federal Verification Corporation, Inc. (FVC) located at 230 Judson Way, Alpharetta, Georgia, 30022. FVC was incorporated in Georgia on February 16, 2001. FVC was utilized by Miko, ADST, UKI, and Optical to perform third party verifications (TPVs) for carrier changes executed by the companies. Rodney Harrison appears to have notarized Miko's Application for a Certificate of Public Convenience and Necessity to Offer Long Distance Telecommunications Service by a Reseller in North Carolina (Attachment G). The application was signed by Margaret Currie and dated July 9, 2001. Also, Rodney A. Harrison appears to be listed as the Custodian of Accounting Records for UKI in Attachment B. Rodney Harrison appears to have also notarized documents in Fulton County, Georgia for ADST, and Optical. Hence, it appears that Rodney Harrison and FVC are affiliated in some capacity with UKI, Miko, ADST, and Optical.

ATN, OLS, WCSS, and FVC - John W. Little, former president of ATN, and Geri Duty, president of OLS, appear to have signed as endorsers for Rodney Harrison's character in an application for Notary Public Commission in Fulton County, Georgia, submitted by Rodney Harrison (Attachment H). Caterina Bergeron appears to have signed as the Notary affirming Rodney Harrison's signature. The document is dated March 2, 2001. Staff believes this document suggests that the presidents of ATN, OLS, WCSS, and FVC may be business associates.

In addition, according to the Amended Verified Complaint of C. David Butler (Attachment I), Chapter 7 Trustee for Sonic, filed on October 8, 1996, in United States Bankruptcy Court for The Northern District of Georgia, Atlanta Division, Caterina Bergeron, Geri Buffa Clary (also known as Geri Duty), Damian Cipriani, and Marc H. Lewis, were employed by Sonic Communications, Inc. (Sonic). Staff believes this is significant because it suggests that these four individuals worked together at Sonic. On page 28 of his complaint, Mr. Butler claims the following:

- One week after the Original Defendants (of which Caterina Bergeron, Geri Buffa Clary, Damian Cipriani, and Marc H. Lewis were included) filed their answer to the Trustee's Complaint, ATN was incorporated.

- ATN's president is John W. Little, former Sonic employee and Buffa family member, and upon information and belief, ATN is in the telecommunications business and received at least $235,000 originating from Sonic to begin its operations and that, most, if not all, of ATN's employees are related to John S. Buffa, former president and majority shareholder of Sonic.

- Cathy (Caterina) Bergeron, Damian Cipriani, Geri Clary, and Marc Lewis are among these former Sonic employees who received payments from ATN as employees or independent contractors.

Based on the aforementioned, staff has reason to suspect that ATN, WebNet, OLS, WCSS, AIDST, Optical, Miko, and New Century may be managed collectively by the same individuals, and that those same individuals appear to have been business associates in the past at Sonic, ATN, and UKI. As discussed in the Slamming History, each of these companies was involved in egregious slamming activity in Florida

Operational Connection

Based on information contained in various slamming complaints from Florida consumers, it appears that WCSS, Optical, Miko, and UKI may share the same operational support system and/or billing system. Customers have received charges for direct dialed calls on their local phone bills from two companies simultaneously even though only one of them is the presubscribed carrier.

Miko and WCSS - In a slamming complaint filed by Rita Dunayew, Request No. 512643T, she states that she received a solicitation from WCSS and agreed to use it as her long distance provider. Upon receiving her bill, she was confused as to who was the service provider; Global Crossings was listed as her service provider, but she was told by Global Crossings that Miko was the company responsible for the customer's account. Ultimately, it was determined that Miko was the customer's long distance service provider, not WCSS. Hence, it appears that WCSS marketed its services to the customer, but Miko was the actual service provider. Staff believes that this suggests Miko and WCSS may be sharing customers, are one in the same company, or share operational support systems.

UKI and Optical - In a slamming complaint filed by Antonio Coro against Optical, Request No. 511708, Mr. Coro provided staff with a bill for his local service that included charges from both UKI and Optical. The complaint proved to be an apparent slamming infraction and Optical credited all the charges. Optical was the presubscribed carrier, but UKI included charges for a Universal Service Fee and a monthly fee on the customer's bill in addition to the charges from Optical.

Miko and Optical - In slamming complaints filed by Labrada Barrero against Miko and Optical, Request Nos. 538563T and 538658T, respectively, Ms. Barrero reported she was billed by both Miko and Optical. In another apparent cross-billing instance, Robert Marco also filed slamming complaints against Miko and Optical, Request Nos. 544466T and 544491T, respectively. Both Ms. Barrero and Mr. Marco provided staff with copies of bills for their local service that included charges from both Miko and Optical. The disputed charges were for direct dialed calls made in April 2003 through Optical's service even though both were switched to Miko. In its response to the complaints, Miko reported that it was responsible for the carrier change although Optical also billed the customer for direct dialed calls during the time Miko was the presubscribed service provider. In the Marco case, Miko credited the customer for most of the charges, apparently including the charges from Optical.

Docket Nos. 020645-TI, 031031-TI, 040062-TI, 040289-TI
Date: April 21, 2004

Slamming History

Sonic - In Order No. PSC-93-1455-FOF-TI, issued October 7, 1993, the Commission ordered Sonic to Show Cause why the company should not be fined or have its certificate cancelled for seventy-one (71) instances of slamming. In the Sonic case, the company explained that customers called a national 800 number, and through an electronic interface, selected Sonic as their carrier. However, a review of the complaints revealed that many consumers denied ever making an initial call to the Sonic 800 number requesting a change. Sonic also maintained that a letter was sent to each customer who called the 800 number welcoming him or her to Sonic service and stating that the customer should call another Sonic 800 number if the customer did not choose Sonic as his/her long distance carrier. However, no complainant reported receiving a letter from Sonic advising them to call another number if they did not wish to subscribe to the service. While Sonic refunded customers for unauthorized preferred interexchange carrier (PIC) changes and re-rated calls to those of the customer's previous carrier, Sonic failed to explain the high volume of slamming complaints against it.

ATN - In Docket No. 001066-TI, staff filed a recommendation on September 14, 2000, for the Commission to order ATN to show cause why it should not be fined for apparent slamming violations alleged by consumers. The company requested that the item be deferred from the Agenda Conference and eventually proffered a settlement. Between March 7, 1996, and March 7, 2001, the Commission received 299 slamming complaints from Florida consumers. The majority of all 299 apparent infractions were for the failure of the company to provide the required documentation to prove that the interexchange carrier change was authorized. At least sixty-one (61) complainants reported they were never contacted by an ATN representative and discovered they had been slammed when they reviewed their telephone bill. ATN could not produce an LOA or TPV recording to confirm any contact with the 61 customers. Moreover, twelve of the complainants reported that a telemarketer misled them into believing they were talking to an AT&T representative about AT&T services, when in fact they were being solicited by ATN. ATN settled the docket by resolving all customer complaints, surrendering its certificate and discontinuing operations in Florida.

WebNet - In Docket No. 001109-TI staff filed a recommendation on September 14, 2000 for the Commission to order WebNet to show cause why it should not be fined for thirty-two (32) apparent slamming violations. Between April 21, 2000, and August 21, 2000, the Commission received forty-five (45) slamming complaints from Florida consumers claiming they were slammed by WebNet. Staff determined that 32 of those complaints were apparent slamming infractions. The majority of the complaints against WebNet are considered to be slamming infractions because the company either failed to provide proof that the customer authorized the carrier change or the TPV provided to the Commission did not meet the requirements set forth in the Rule 25-4.118, F.A.C.

OLS - In Docket No. 010245-TI, staff filed a recommendation on March 21, 2001, for the Commission to order OLS to show cause why it should not be fined for forty-nine (49) apparent slamming violations. Staff reviewed the slamming complaints and concluded that all of the violations result from OLS's failure to provide the appropriate documentation to prove that the service provider changes were authorized. In these cases, OLS used telemarketers to solicit it services and recorded the verification process as proof of the customer's authorization for OLS to change providers. The copies of the recorded verification process that OLS sent to the

Commission's staff did not contain the necessary information for verification and/or authorization as required by the Commission's slamming rule.

ADST - Between January 24, 2002, and July 16, 2003, the Commission received seventy-eight (78) slamming complaints against ADST. Staff determined that sixty-nine (69) of those complaints appear to be slamming infractions. The Commission has not received any complaints against ADST since July 16, 2003, therefore, a docket was not opened and staff is currently monitoring the company for additional complaints. In most of the complaints, the customers state that they had no contact with any representatives from ADST, and only became aware that ADST was their long distance carrier when they reviewed their local telephone bills, similar to complaints filed against ATN. The most common complaint was that after apparently slamming the customers' service, ADST would not credit the customers' accounts after an ADST representative indicated to the customer that the company would issue a credit. In some cases the customers continued to be billed for six months without receiving credit.

WCSS - From December 19, 2001, through August 15, 2003, the Commission received eighty-one (81) slamming complaints from Florida consumers, sixty-six (66) of which were determined by staff to be apparent slamming infractions. From October 4, 2002, through December 4, 2002, staff corresponded with WCSS and the company's legal counsel to address the alleged slamming. The majority of the complaints were considered to be slamming infractions because the company either failed to provide proof that the customer authorized the carrier change or the TPV provided to the Commission did not meet the requirements set forth in the slamming rule. Like ADST, WCSS failed to credit the customers' accounts as indicated in its resolution to the slamming complaints. In several cases, the customers filed additional complaints claiming WCSS did not credit their accounts as promised. WCSS then issued the complaining customer a refund check to resolve the ensuing complaint. Staff is currently monitoring WCSS for additional complaints; the most recent new slamming complaint was received August 15, 2003.

Telemarketing Similarities

Slamming complaints received against the companies reference similar telemarketing tactics which appear to be misleading and confusing to the consumers. All of the companies utilize telemarketing to solicit their services. The companies still operating and telemarketing (WCSS, Miko, Optical, and New Century) appear to employ a variety of sales pitches to persuade consumers to provide their personal information and state "yes" to a question. The recorded information and statements are allegedly used to create a third party verification (TPV) tape that the companies use as authorization to switch the customers' long distance service. These sales tactics involve the solicitation of a free long distance calling card, offering customers a promotional check, offering to send the customer information about the company's services and rates, or supposedly conducting a survey regarding long distance service or telephone companies.

UKI - In a slamming complaint filed against UKI by Mr. Jose A. Abin, Request No. 420514T, Mr. Abin states in his letter dated November 19, 2001, that a telemarketer called his wife and informed her that she was the winner of a free long distance calling card. Mr. Abin states that the telemarketer instructed his wife to say "yes" or "no" at the sound of the tone and she provided her date of birth and address. Mr. Abin claims that at no time during the call did the telemarketer indicate that their long distance service provider would be changed.

Optical - In a slamming complaint filed against Optical by Mr. Jaime R. Quinones, Request No. 446088T, Mr. Quinones states that he received a call from "The Telephone Company" and was offered a free 1500 minute calling card from the telemarketer. Mr. Quinones states that he was instructed to answer the questions that were similar to, "would you like 1500 free minutes for trying our service," and "are you authorized to make decisions about your phone service?" Mr. Quinones responded "yes" to both of the questions, then provided his name, address, and date of birth. Mr. Quinones states that, "Nothing was ever mentioned that I would be changing my long distance carrier. They offered me a calling card I never got; instead, they switch[ed] my long distance company."

WCSS - In complaints filed against WCSS, some customers claim that a telemarketer offered to mail the customers a promotional check and a form to switch service. The customers provided their name and address and mother's maiden name or date of birth to receive the information. However, the customers claim they never received the check or form, but their long distance service was switched to WCSS.

- In the complaint by Joseph Scherf, Sr., Request No. 483607T, Mr. Scherf states that he received a call from a company supposedly doing a survey, and when he listened to the TPV tape played by WCSS, he claimed the questions on the tape are not the same as the questions asked of him during the survey.

- In a complaint filed by Jose Luis Campos, Request No. 510342T, Mr. Campos states that he did not authorize WCSS to switch his long distance service, and he only provided his personal information in order to receive a free calling card.

OLS - Staff's investigation into OLS' telemarketing methods revealed some extremely egregious conduct. Staff personally called and talked to fifty of the people who filed a slamming complaint against OLS. A significant number of the fifty complainants reported that the telemarketers who called them misrepresented themselves as Verizon representatives. After talking to some of the complainants and reviewing the cases, staff learned that OLS telemarketers apparently used several fraudulent approaches to persuade consumers to change providers to OLS and go through its verification process. First, the telemarketer allegedly told the consumer that due to Verizon's merger with GTE, they would not have a long distance carrier and needed to choose a new one. Second, the telemarketer allegedly told the consumer that they were with Verizon and needed to verify the customer's information as a result of merging with GTE. Third, some complainants stated that they were led to believe that OLS (OLS is an acronym for On Line Services) was a long distance program offered by Verizon.

ADST - In slamming complaints filed against ADST, some customers reported instances of misleading telemarketing.

- In Request No. 486325T, Mr. Terrence Griffiths states in a hand written note to staff, "We did not authorize the [carrier] change – the survey questions asked were not what is heard on the [TPV] tape. The responses appear to be dubbed in."

- In Request No. 489231T, Mark Holland states that a telemarketer called indicating that he was from Sprint and that he was due a refund for overcharges: on his next bill, Mr.

Holland's long distance service was switched to ADST. Mr. Holland states that he tried to resolve the matter with ADST and ILD, but both companies were rude and would hang up.

- In Request No. 538170T, Melissa Fritsch claims that she agreed to switch to ADST in June 2002, but did not receive the rates promised in the telemarketing call and switched back to MCI in November 2002. Ms. Fritsch reported that in April 2003, her long distance service was again switched by ADST. She contacted ADST and was informed that she authorized the carrier change on April 18, 2003. Ms. Fritsch states that the ADST representative played the TPV of her verification in June 2002. The company never provided a TPV for the carrier change that allegedly occurred on April 18, 2003.

Miko – Miko's apparent slamming activity is discussed in Issue 1.

New Century – New Century's slamming activity is discussed in Issue 2. Staff acknowledges that the company's legal counsel approached staff in an effort to resolve the apparent slamming instances, however, due to the nature of the complaints and the suspected link between Miko and the other companies, staff advised the company that it will file a recommendation seeking the Commission's position on this matter.

Aggregate Affects

Staff believes that the group of companies functions in the following manner. The first company, ATN, began to engage in aggressive and sometimes misleading telemarketing tactics to enlist a large number of customers and generate cash flow from ILD. Consequently, the PSC received a large number of slamming complaints. Once the PSC began enforcement proceedings, ATN apparently ceased the activities that were causing the slamming complaints. However, WebNet began to engage in similar telemarketing activities, and thus, the slamming complaints against Webnet began to increase. Again, once staff initiated enforcement proceedings against WebNet, the complaints against Webnet declined. Subsequently, the slamming complaints against OLS increased about the same time the complaints against WebNet decreased, suggesting that OLS increased its telemarketing activities. This pattern is repeated with UKI, Optical, UKI again, ADST, WCSS, Miko, and finally New Century. It appears that each company, once notified by staff that it is under investigation, stops or minimizes telemarketing in Florida to reduce the number of complaints, but another company assumes the same telemarketing tactics practiced by the preceding company. None of the companies, OLS excluded, appear to have changed their telemarketing and verification processes to comply with the Commission's slamming rule. Collectively, the companies appear to sustain the misleading telemarketing activities by transferring operations to a new company so as to give the appearance that the company under investigation has corrected the problems causing the apparent slamming infractions. Staff created Chart 1 in Attachment HB to illustrate this cycle.

According to the Commission's Unauthorized Carrier Change Complaints Report, since July 1, 1999, 174 different companies providing service in Florida have committed at least one apparent slamming infraction. The nine companies discussed herein are responsible for one-third (1,255) of all the apparent slamming infractions stemming from consumer complaints the Commission received since July 1, 1999. If Sprint, AT&T, and MCI are excluded from the sample, these nine companies are responsible for one-half of all the carrier changes that appear to

be slamming infractions. Chart 7 in Attachment BB shows the number of complaints received from all nine companies combined.

In summary, it appears that the individuals named in this recommendation have perpetuated a history of slamming activity at each of the companies in which they were associated. Those individuals appear to have been employed by or contracted their services to Sonic, then ATN, thereafter, they established their own corporations: WCSS, ADST, WebNet, UKI, and OLS. Once these companies began to attract the interest of the FCC and state regulatory agencies, the operations of the companies apparently were transferred to Optical, Miko, and New Century. Staff believes that the companies' intent is to enlist as many customers as possible through aggressive and misleading telemarketing tactics so as to generate cash flow from billing the customers through LLD. By delaying the credits due to the complainants for as long as possible, the companies are able to maintain a positive cash flow without actually providing service to customers on an ongoing basis. The Commission is vested with jurisdiction over this matter pursuant to Sections 364.02(13), 364.04, 364.285 and 364.603, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

Docket Nos. 020645-TI, 031031-TI, 040062-TI, 040289-TI
Date: April 21, 2005

Issue 2: Should the Commission penalize New Century Telecom, Inc. $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?

Recommendation: Yes. 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. **(Buys, Rojas)**

Staff Analysis: 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 the company failed to comply with the specific verification methodologies required by the Commission's slamming rules and the apparent egregious nature of the marketing utilized by the company.

In 9 cases, listed in Attachment U, 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. (refer to Issue 1 for expounded rule).

In 27 cases, listed in Attachment V, 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. (Refer to Issue 1 for expounded rule). 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 W, New Century provided staff with a TPV in which the customer authorized a carrier change for 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 rule waiver to transfer the customer base pursuant to Rule 25-24.455(4), F.A.C.

In the complaint of Ms. Alicia Figueroa, Request No. 521163T, Miko switched her service without her authorization in December 2002. In its response to the complaint, Miko stated that Ms. Figueroa's account was cancelled on February 24, 2003, and the company submitted a TPV that was determined by staff to be insufficient. On September 22, 2003, Ms. Figueroa's long distance service was switched to New Century Telecom without her authorization. In its response to her complaint, Request No. 567027T, New Century reported to staff that it acquired the customer base from Miko, who was the customer's authorized provider. New Century also claims that Miko sent notices to its customer's informing them of the transfer. However, Ms. Figueroa states in her letter to staff, dated October 31, 2003, (Attachment X) that she utilized IDT as her long distance carrier at the time of the slam. Hence, Ms. Figueroa was not a Miko customer at the time New Century switched her service. Further, in its response to

the complaint. New Century sent staff the same recording of the TPV that Miko sent staff for Ms. Figueroa's prior complaint against Miko. Upon review of both TPV recordings, staff determined that the two recordings appear to be from the same verification of Ms. Figueroa, except the TPV recording submitted by New Century was missing additional statements and conversation between the customer and verifier that was heard in the original recording submitted by Miko.

After more than seven years without any complaints against New Century, the Commission began to receive slamming complaints against the company in August 2003. Upon reviewing the customer complaints, staff determined that New Century is employing the same telemarketing tactics used by Miko which are discussed in Issue 1. For example, both companies obtained information from potential customers by offering a free trial prepaid phone card. According to the customers, the phone card was never delivered, even though their long distance service was switched. In a follow-up letter to the complaint filed by Frank and Ricci App (Attachment Y), the Apps state that New Century misleaf 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 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.

Based on staff's analysis of the complaints, it seems likely that Miko and New Century are operated by the same principals and some of Miko's customers were transferred from Miko to New Century without the proper regulatory approval. In addition, the ownership of New Century was transferred to Kaym Bartel on or about August 1, 2002, according to correspondence provided by New Century's legal counsel. The Commission acknowledged the transfer in Docket No. 020130-TI through Order No. PSC-02-1089-PAA-TI.

Based on the aforementioned and the legal analysis cited in Issue 1, 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, and thus, staff recommends that the Commission find that New Century has, by its actions, willfully violated Sections 364.603, Florida Statutes, and impose a $420,000 penalty on the company to be paid to the Florida Public Service Commission.

Issue 5: If staff's recommendation in Issue 1, Issue 2, Issue 3, or Issue 4, is approved, and the company's registration number is removed from the register, and the company's tariff is cancelled, and the company is required to immediately cease and desist providing intrastate interexchange telecommunications services within Florida, the Commission should order any company that bills for any company to cease and desist billing Florida customers for said company?

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

Staff Analysis: Due to the nature of the companies' business practices as discussed in this recommendation, staff believes that it is necessary for the Commission to issue a separate order to ensure that any billing activity, on behalf of a company ordered by the Commission to cease and desist providing service in Florida, would be blocked. It is reasonable to assume that the company would no longer require billing services if it is no longer authorized to provide service.

Issue 6: Should these dockets be closed?

Recommendation: The Order for each docket issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest in the respective docket within 21 days of the issuance of the Proposed Agency Action Order. If the Commission's Order is not protested, the docket should be closed administratively upon either receipt of the payment of the penalty from the respective company cited in each docket or upon the removal of the company's registration number from the register and cancellation of the company's tariff. A protest in one docket should not prevent the action in a separate docket from becoming final, nor should any action by the Commission preempt, including but not limited to any settlement, preclude or resolve any matters under review by any other Florida Agencies or Departments. **(L. Fordham, Rojas, Teitzman)**

Staff Analysis: The Order for each docket issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest in the respective docket within 21 days of the issuance of the Proposed Agency Action Order. If the Commission's Order is not protested, the docket should be closed administratively upon either receipt of the payment of the penalty from the respective company cited in each docket or upon the removal of the company's registration number from the register and cancellation of the company's tariff. A protest in one docket should not prevent the action in a separate docket from becoming final, nor should any action by the Commission preempt, including but not limited to any settlement, preclude or resolve any matters under review by any other Florida Agencies or Departments.

Kenney Attachment 3