Appendix A

Memorandum (without attachments) Dated April 21, 2004, prepared by the Staff of the Florida PSC Regarding, Among Other Things, the Issues and Recommendations Associated with the Staff's Investigation of New Century Telecom, Inc., for Violations of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection

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Public Service Commission

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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) KMT
Office of the General Counsel (L. Fordham, Rojas, Teitzman) C.J.F. AT SK

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

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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 Docket 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 Currie, 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 1+ 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 $335,000 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 those 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, ADST, 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 Librada 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.

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. 489731T, 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 BB 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 2 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 ILD. 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.

Discussion of Issues

Issue 1: Should the Commission penalize Miko Telephone Communications, Inc. $10,000 per apparent violation, for a total of $1,540,000 for 154 apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

Recommendation: Yes. If Miko Telephone Communications, 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 TJ561 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, L. Fordham)**

Staff Analysis: From July 31, 2002, through October 31, 2003, the Commission received a total of 159 slamming complaints against Miko. On February 20, 2003, staff sent Miko a letter via certified U.S. Mail (Attachment J) informing Miko that the company's TPVs do not meet all the requirements set forth in Rule 25-4.118, Florida Administrative Code (F.A.C.). In its letter, staff requested that Miko investigate the slamming complaints and provide staff with a written response.

In its response (Attachment K), Miko stated that (1) it is not at fault for slamming if the consumer does not remember the telemarketing call, (2) it has verifications on all customers, and therefore, has no slamming complaints, and (3) it has stopped marketing in the state of Florida at the present time. The company also provided staff with a revised verification script, however, the script still does not comply with the requirements set forth in Rule 25-4.118(3)(a), F.A.C.

From March 6, 2003, through August 19, 2003, staff monitored and evaluated the slamming complaints the Commission received against Miko to determine if the company was still marketing its service in Florida. Staff selected random complaints and requested preferred interexchange carrier (PIC) histories for the customers' service from BellSouth and Verizon. The PIC history provided by BellSouth shows that Miko switched a complainant's long distance service on April 18, 2003, and the PIC history from Verizon shows that Miko switched a complainant's InterLATA and IntraLATA services on June 13, 2003. Miko previously indicated to staff that it stopped marketing in Florida as of February 26, 2003. Hence, it appears that Miko did not cease marketing in Florida as it indicated to staff.

Moreover, it appears that Miko's telemarketing and verification processes are egregious and misleading in nature. In many of the complaints, the customers claim that Miko altered the TPV recording to make it appear that they authorized the carrier change. In the seven complaints listed below, the customers submitted letters or emails explaining the circumstances of their slamming incidents.

1. Ms. Grace Calvani states in her letters (Attachment L) that she never authorized service and the TPV Miko obtained was a recording of her mother confirming Ms. Calvani's information.

2. Rev. Manacio G. Dias states in his letter (Attachment M) that he was offered "a gift of one free 100 minute long distance calling card for a trial." Rev. Dias explains that he was told to say "yes," followed by his name and phone number after a recorded message to confirm the acceptance of the free trial phone card.

3. Ms. Ivelise Velez states in her email (Attachment N) that, "this company is making telemarketing phone calls and then using the information they are collecting to slam. . . . I called the company and they are playing the information back in pieces so that it sounds like the person was answering the questions when if fact the information was requested as part of a different conversation."

4. Mr. Luis Ahumada states in his email (Attachment O) that, "the tape sounds very funny and overlaid. As if the questions that were asked were tailored to overlay a conversation about accepting the change in long distance."

5. Ms. Alicia Figureoa states in her letter (Attachment P) that she received a phone call from a person requesting verification of her name, address, date of birth, and some additional personal information. She states she refused to give out the information and hung up. On her next phone bill, she was informed her long distance carrier was switched to Miko. She further states that, "she strongly objects to the deceptive questionable tactics used to switch her telephone service."

6. Mrs. Jessy Wollstencroft states in her letter (Attachment Q) that she received an unsolicited phone call and was asked some questions by a personable solicitor. Later she realized her phone service was slammed. She states in her letter to Miko that, ". . . at no time did your solicitor tell me he was recording the conversation. I NEVER accepted to be switched by your company. The only thing I can assume is that you created the voice recording that my husband heard by editing the conversation you recorded without my permission."

7. Mr. Orlando Cabeza states in his email (Attachment R) that his wife received an unsolicited phone call from a long distance company offering a promotional free long distance card with 1200 free minutes and at no time did the telemarketer advise his wife that by agreeing to accept the free calling card she was also agreeing to switch long distance service. Mr. Cabeza states that he never received the free long distance card as promised, but his long distance service was switched to Miko. Mr. Cabeza further explains that the telemarketer that called his wife had a male voice and when he heard the recording of the TPV that Miko played for him, that, "the portion of the recording which purportedly indicates that we are authorizing a change to Miko is in a female voice and it cuts in and out between her and the male 'pitch-man' who placed the call as if the recording has been altered or modified."

To summarize, Miko apparently markets its services to Florida consumers through telemarketers who apparently employ a variety of sales pitches to persuade the customers to provide their name, address, telephone number, and date of birth or mother's maiden name. Some of Miko's sales tactics involve soliciting a free long distance calling card to try Miko's service without any obligation, offering customers a promotional check, or purportedly conducting a survey regarding long distance service or telephone companies. After reviewing the complaints, staff found no evidence that Miko's telemarketers advised the customers that the purpose of the call was to solicit a change of the service provider of the customer as required by Rule 25-4.118(9)(b), F.A.C. Most importantly, it appears that Miko's telemarketers made misleading and deceptive references during telemarketing and verification while soliciting for subscribers in apparent violation of Rule 25-4.118 (10), F.A.C.

Section 364.603, Florida Statutes, states:

> The commission shall adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service. Such rules shall be consistent with the Telecommunications Act of 1996, provide for specific verification methodologies, provide for the notification to subscribers of the ability to freeze the subscriber's choice of carriers at no charge, allow for a subscriber's change to be considered valid if verification was performed consistent with the commission's rules, provide for remedies for violations of the rules, and allow for the imposition of other penalties available in this chapter.

To implement Section 364.603, Florida Statutes, the Commission adopted Rule 25-4.118, F.A.C., to govern carrier change procedures.

Upon review of the 159 slamming complaints received against Miko, staff determined that 154 are apparent slamming violations, in part, because the company failed to comply with the specific verification methodologies required by the Commission's slamming rules. Miko markets its services in Florida through its own telemarketers and employs a third party verification process to verify the subscriber authorized the company to change service providers.

Staff determined that in 24 cases, listed in Attachment S, Miko failed to provide proof in the form of a TPV recording that the customer authorized Miko to change service providers in accordance with Rule 25-4.118(1) and (2), F.A.C.

In the remaining 130 cases listed in Attachment T, the TPVs submitted by Miko did not contain all the specific verification information required by Rule 25-4.118(2)(c), F.A.C., listed in subsection (3)(a) 1. through 5.

Staff determined that in all but a few of cases, the TPVs submitted by Miko were missing the following statements:

- 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.
- The statement that the Local Exchange Carrier (LEC) may charge a fee for each provider change.

In some of the TPVs staff reviewed, the telemarketer stays on the line during the verification process and prompts the customer to answer verification questions; meaning the TPV is not performed by an independent third party as required by Rule 25-4.118(2)(c), F.A.C. Hence, all of the TPVs the company submitted to the Commission as proof the customers authorized Miko to change their service providers are not considered valid. In addition, when resolving the slamming complaints, Miko did not refund the charges within 45 days of notification to the company by the customer pursuant to Rule 25-4.118(8), F.A.C.

Miko indicated to staff in its letter (Attachment K) that FVC is the company that performs its TPVs. As discussed in the case background, FVC does not appears to be totally independent and unaffiliated with Miko as required Rule 25-4.118(2)(c), F.A.C. Further, it appears that Miko submitted TPVs that were not the actual verifications that were recorded. Therefore, staff believes that all of the TPVs submitted by Miko could be considered suspect.

In most of the complaints, Miko rerated its charges for the customers' calls to 7¢ per minute or the rates of the customers' preferred carrier instead of refunding all of the charges for the first 30 days as required by Rule 25-4.118(8), F.A.C. Further, in most cases, Miko did not refund the Federal Tax and Florida Communications Tax assessed on the company's charges.

In addition, Rule 25-4.118(13)(b), F.A.C., states that in determining whether fines or other remedies are appropriate for a slamming infraction, the Commission shall consider among other actions, the actions taken by the company to mitigate or undo the effects of the unauthorized change. These actions include but are not limited to whether the company, including its agents and contractors followed the procedures required under subsection (2) with respect to the person requesting the change in good faith, complied with the credit procedures of subsection (8), took prompt action in response to the unauthorized change, and took other corrective action to remedy the unauthorized change appropriate under the circumstances.

Based on the requirements of Rule 25-4.118(13)(a), F.A.C., Miko appears to have committed 154 unauthorized carrier changes. First, Miko did not follow the procedures required under Rule 25-4.118(2), F.A.C. Second, Miko did not comply with the credit procedures required under Rule 25-4.118(8), F.A.C. Third, staff informed Miko that its TPVs were not in compliance with the Commission's slamming rules and the company failed to take the corrective actions to remedy its verification process, and fourth, it appears that Miko's telemarketers made misleading and deceptive references during telemarketing and verification in apparent violation of Rule 25-4.118(10), F.A.C., and fifth, it appears Miko submitted fraudulent TPVs to the Commission.

Based on the aforementioned, staff believes that Miko's failure to comply with the requirements of Rule 25-4.118, F.A.C. is a "willful violation" of Sections 364.603, Florida Statutes, in the sense intended by Section 364.285, Florida Statutes.

Pursuant to Section 364.285(1), Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than $25,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364, Florida Statutes.

Section 364.285(1), Florida Statutes, however, does not define what it is to "willfully violate" a rule or order. Nevertheless, it appears plain that the intent of the statutory language is to penalize those who affirmatively act in opposition to a Commission order or rule. See, Florida State Racing Commission v. Ponce de Leon Trotting Association, 151 So.2d 633, 634 & n.4 (Fla. 1963); c.f., McKenzie Tank Lines, Inc. v. McCauley, 418 So.2d 1177, 1181 (Fla. 1st DCA 1982) (there must be an intentional commission of an act violative of a statute with knowledge that such an act is likely to result in serious injury) [citing Smit v. Geyer Detective Agency, Inc., 130 So.2d 882, 884 (Fla. 1961)].

Thus, it is commonly understood that a "willful violation of law" is an act of purposefulness. As the First District Court of Appeal stated, relying on Black's Law Dictionary:

> An act or omission is 'willfully' done, if done voluntarily and intentionally and within the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

Metropolitan Dade County v. State Department of Environmental Protection, 714 So.2d 512, 517 (Fla. 1st DCA 1998)[emphasis added]. In other words, a willful violation of a statute, rule or order is also one done with an intentional disregard of, or a plain indifference to, the applicable statute or regulation. See, L. R. Willson & Sons, Inc. v. Donovan, 685 F.2d 664, 667 n.1 (D.C. Cir. 1982).

Thus, the failure of Miko to comply with Rule 25-4.118, F.A.C., meets the standard for a "willful violation" as contemplated by the Legislature when enacting section 364.285, Florida Statutes. "It is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833); see, Perez v. Marti, 770 So.2d 284, 289 (Fla. 3rd DCA 2000) (ignorance of the law is never a defense). Moreover, in the context of this docket, all intrastate interexchange telecommunication companies, like Miko, are subject to the rules published in the Florida Administrative Code. See, Commercial Ventures, Inc. v. Beard, 595 So.2d 47, 48 (Fla. 1992).

Further, the amount of the proposed penalty is consistent with penalties previously imposed by the Commission upon other IXCs that were determined to be slamming subscribers. Thus, staff recommends that the Commission find that Miko has, by its actions, willfully violated Sections 364.603, Florida Statutes, and impose a $1,540,000 penalty on the company to be paid to the Florida Public Service Commission.

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. Figureroa, 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 mislead them by offering a free prepaid phone card for no cost or obligation. Ricci App verified her name and address by responding "yes" to computer generated questions. The 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 Kayrn 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 3: Should the Commission penalize UKI Communications, Inc. $250,000 for apparent violation of Proposed Agency Action Order No. PSC-03-0990-PAA-TI, issued on September 3, 2003, made final and effective by Consummating Order No. PSC-03-1078-CO-TI, issued on September 30, 2003?

Recommendation: Yes. If UKI Communications, 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 and the Regulatory Assessment Fees with statutory penalty and interest it was ordered to pay in PAA Order No. PSC-03-0990-PAA-TI within fourteen calendar days after issuance of the Consummating Order, the collection of the penalty and the Regulatory Assessment Fees with statutory penalty and interest should be referred to the Department of Financial Services. This docket should be closed administratively upon either receipt of the payment of the penalty and the Regulatory Assessment Fees with statutory penalty and interest or upon their referral to the Department of Financial Services. **(M. Watts, Teitzman)**

Staff Analysis: From January 1, 2001, to July 28, 2003, the Commission received 319 slamming complaints against UKI. Staff determined that 203 of the 319 slamming complaints received by the Commission appear to be violations of Rule 25-4.118, F.A.C. On July 29, 2003, UKI submitted its proposal to settle Docket No. 020645-TI, and on September 30, 2003, the Commission issued Consummating Order No. PSC-03-1078-CO-TI, making PAA Order No. PSC-03-0990-PAA-TI, final and effective; establishing the following schedule for UKI's compliance with the terms of the PAA Order:

- December 1, 2003 – Cancellation of UKI's tariff and registration.
- December 29, 2003 – Pay all outstanding RAFs with statutory penalty and interest.
- January 28, 2004 – Submit final report detailing how UKI complied with the terms of the settlement offer and the Order, including resolution of all unresolved consumer complaints.

On January 28, 2004, staff determined that UKI did not comply with any of the terms of its settlement offer and Order No. PSC-03-1078-CO-TI. Subsequently, on February 2, 2004, UKI attempted to effect a voluntary cancellation of its registration by submitting an unsigned request to cancel its "Certificate of Authority to transact business in the state of Florida."

Based on the aforementioned and the legal analysis cited in Issue 1, staff believes that UKI's failure to comply with the Commission' lawful Orders in Docket No. 020645-TI is a "willful violation" of said Orders, in the sense intended by Section 364.285, Florida Statutes, and thus, staff recommends that the Commission find that UKI has, by its inactions, willfully violated Order Nos. PSC-03-0990-PAA-TI and PSC-03-1078-CO-TI, and impose a $250,000 penalty on the company to be paid to the Florida Public Service Commission.

Issue 4: Should the Commission penalize Optical Telephone Corporation $10,000 per apparent violation, for a total of $340,000, for 34 apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

Recommendation: Yes. If Optical Telephone Corporation 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 TJ551 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 January 3, 2003, through March 12, 2004, the Commission received forty (40) slamming complaints against Optical Telephone Corporation (Optical) from Florida consumers. Staff determined that thirty-four (34) 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 11 cases, listed in Attachment Z, Optical failed to provide proof in the form of a TPV recording that the customer authorized Optical 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 23 cases, listed in Attachment AA, the TPVs submitted by Optical 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 Optical were missing the following statements and information:

- 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.
- The statement that the Local Exchange Carrier (LEC) may charge a fee for each provider change.
- Six (6) TPVs were missing the billing telephone number.

From September 28, 2001, through January 1, 2003, the Commission received 234 slamming complaints against Optical from Florida consumers. Staff determined that 202 of those complaints were apparent slamming infractions. Staff addressed the slamming instances with Optical beginning in April 2002. Staff informed the company of the deficiencies in the TPVs submitted in response to slamming complaints. In a meeting with staff, Optical indicated it would implement the necessary changes to its telemarketing and verification processes to eliminate slamming. The company appears to have taken some action to reduce the number of slamming complaints received since that time; however, recent complaints reference the same telemarketing and verification practices the company was utilizing prior to discussions with staff. Hence, it appears that the company has not taken the necessary actions to change its telemarketing and verification tactics.

In the slamming complaint filed by Oscar and Ana Dominguez, Request No. 554215T, the complainants claim in their letter that the company solicited a person visiting their home who was not authorized to switch carriers. They further claim that the TPV recording Optical played for them contained "leading questions" and that the recording is "extremely weird and not consecutive." They further stated, "It sounded as if different pieces of the recording were pasted after they would ask my visitor questions. . . ."

In the slamming complaint filed by Candido Mendoza, Request No. 531486T, Mr. Mendoza reported that he was charged by Optical for local toll calls. Upon contacting Optical, he was informed that his service had been switched and the customer representative played a recording were somebody answered questions regarding name and date of birth. Mr. Mendoza stated that the company informed him that the recording was made during a telemarketing offer they were conducting and somebody agreed to the offer and that was enough for Optical to bill him. The company did not provide a copy of the TPV in its response to the complaint.

Hence, staff believes that Optical has not changed its telemarketing and verification practices to comply with the Commission's slamming rule and based on the legal analysis cited in Issue 1, staff believes that Optical'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 Optical has, by its actions, willfully violated Sections 364.603, Florida Statutes, and impose a $340,000 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. **(Buys, 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.

Appendix B

Letter Dated April 29, 2004, from the Helein Law Group, P.C., Representing NCT, to the Florida PSC Requesting the Deferral of the Florida PSC's Consideration of the Issues and Recommendations Contained in the Staff's Memorandum Dated April 21, 2004.

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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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

Appendix C

Request Dated April 30, 2004, by the Staff of the Florida PSC, in Response to the Letter from the Helein Law Group, P.C., Dated April 29, 2004, for the Florida PSC to Defer Its Consideration of the Issues and Recommendations Contained in the Staff Memorandum Dated April 21, 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 Buys Initials (OPR Division Director or Designee):

Signature (Legal Staff): Initials (Legal Division Director or Designee): RGM

EXECUTIVE DIRECTOR:

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

Initials: Date: 4/30/4

Comments:

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

Initials: 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.

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PSC/EXD-1 (10/02)

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Appendix D

Vote Sheet of the Florida PSC Dated May 3, 2004, which Shows Deferral of Its Consideration of the Issues and Recommendations Regarding NCT Contained in the Staff's Memorandum Dated April 21, 2004

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

MAY 3, 2004

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.

Issue 1: Should the Commission penalize Miko Telephone Communications, Inc. $10,000 per apparent violation, for a total of $1,540,000 for 154 apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?
Recommendation: Yes. If Miko Telephone Communications, 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 TJ561 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 service within Florida.

DEFERRED

COMMISSIONERS ASSIGNED: All Commissioners

COMMISSIONERS' SIGNATURES

MAJORITY	DISSENTING

REMARKS/DISSENTING COMMENTS:

Commissioner Davidson participated in the conference by telephone. He agreed with/dissented from the majority vote and will sign the vote sheet upon return to the office.

DOCUMENT NUMBER-DATE
05214 MAY-5 ⌘
FPSC-COMMISSION CLERK

VOTE SHEET
MAY 3, 2004
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.

(Continued from previous page)

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 service within Florida.

Issue 3: Should the Commission penalize UKI Communications, Inc. $250,000 for apparent violation of Proposed Agency Action Order No. PSC-03-0990-PAA-TI, issued on September 3, 2003, made final and effective by Consummating Order No. PSC-03-1078-CO-TI, issued on September 30, 2003?
Recommendation: Yes. If UKI Communications, 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 and the Regulatory Assessment Fees with statutory penalty and interest it was ordered to pay in PAA Order No. PSC-03-0990-PAA-TI within fourteen calendar days after issuance of the Consummating Order, the collection of the penalty and the Regulatory Assessment Fees with statutory penalty and interest should be referred to the Department of Financial Services. This docket should be closed administratively upon either receipt of the payment of the penalty and the Regulatory Assessment Fees with statutory penalty and interest or upon their referral to the Department of Financial Services.

VOTE SHEET
MAY 3, 2004
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.

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Issue 4: Should the Commission penalize Optical Telephone Corporation $10,000 per apparent violation, for a total of $340,000, for 34 apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?
Recommendation: Yes. If Optical Telephone Corporation 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 TJ551 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 service within Florida.

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 service 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.

VOTE SHEET
MAY 3, 2004
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.

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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.