

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

March 19, 2004
Jefferson City, Missouri
Volume 1

The Staff of the Missouri)
Public Service Commission,)
Complainant,)
vs.) Case No.: TC-2004-0325
New Century Telecom, Inc.,)
Respondent.)

KEVIN A. THOMPSON, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.

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1 P R O C E E D I N G S

2 JUDGE THOMPSON: Good morning. We are here in
3 the matter of the Staff of the Missouri Public Service
4 Commission, Complainant, versus New Century Telecom,
5 Inc., Respondent, Case No. TC-2004-0325.

6 My name is Kevin Thompson. I'm the Regulatory
7 Law Judge assigned to preside over this matter. Why
8 don't we take oral entries of appearance at this time.

9 Mr. Berlin?

10 MR. BERLIN: Yes, Your Honor. Robert S.
11 Berlin, appearing on behalf of Staff of the Missouri
12 Public Service Commission, P. O. Box 360, Jefferson
13 City, Missouri 65102.

14 JUDGE THOMPSON: Thank you.

15 There was a filing on March 12th from New
16 Century Telecom entitled New Century Telecom, Inc.
17 responds to order setting prehearing conference and
18 requiring filing of proposed procedural schedule.

19 The -- to summarize the pleading, it indicates
20 that New Century Telecom will not be appearing today.
21 They have not been excused. The prehearing conference
22 has not been continued, obviously.

23 And, in fact, there's been no such motion
24 made. Neither was there any sort of motion made from
25 the Commission to participate by telephone or in some

1 other manner.

2 Consequently, let the record reflect that New
3 Century Telecom is not present, although we are here
4 convened at the time and place set in the notice.

5 Do you have anything for me, Mr. Berlin?

6 MR. BERLIN: Yes, Your Honor. I have to say
7 that I have been in conference with the New Century
8 Telephone counsel. I did not lead them towards the
9 notion that they could appear by telephone.

10 JUDGE THOMPSON: Okay.

11 MR. BERLIN: However, I believe they may have
12 done so, if afforded that opportunity. I was fully
13 expecting that they would make an appearance; however,
14 as you know, and according to that motion that they
15 filed, they are in Virginia and they cited cost as a
16 prohibitive expense of making a physical appearance
17 here today.

18 I'll also point out that your order setting
19 this prehearing conference directed Staff to enter into
20 some settlement negotiations on this complaint. And as
21 you know, Staff is not authorized to enter into any
22 settlement negotiations, and that the -- New Century's
23 response to this order setting prehearing conference
24 that was filed March 12th, that you referred to, stated
25 that they are prepared to pursue settlement

1 negotiations when that time is appropriate.

2 JUDGE THOMPSON: Should the Commissioners
3 decide to allow such to go forward?

4 MR. BERLIN: That's correct.

5 JUDGE THOMPSON: Okay.

6 MR. BERLIN: And so --

7 JUDGE THOMPSON: Well, I apologize if I
8 muddied the waters with my order.

9 MR. BERLIN: Well --

10 JUDGE THOMPSON: Perhaps I did.

11 MR. BERLIN: Well, what I -- what -- what
12 Staff is considering right now is -- well, we'd -- we'd
13 like to go on record that New Century Telephone has
14 submitted their 2002 annual report.

15 JUDGE THOMPSON: Okay.

16 MR. BERLIN: We show that it was received on
17 February 9th. And indeed, on the February 19th notice
18 of satisfaction that was filed by New Century Telephone
19 in their paragraph 6, they state that on or about
20 February 6th of 2004 N-- NCT would file its 2002 annual
21 report.

22 And we would like the record to reflect that
23 we have received it as of the 9th of February.

24 JUDGE THOMPSON: I understand that Staff will
25 still be seeking authorization to pursue penalties;

1 isn't that correct?

2 MR. BERLIN: Yes, Your Honor. And what --
3 in --

4 JUDGE THOMPSON: Will you --

5 MR. BERLIN: In looking at --

6 JUDGE THOMPSON: I'm sorry.

7 Will you still be pursuing, also, cancellation
8 of certificate?

9 MR. BERLIN: No, because of the fact that they
10 did file -- they filed the notice of satisfaction on
11 February 19th. We -- while -- while that may be viewed
12 as an answer, they never answered the -- the
13 allegations in the complaint.

14 They did file their 2002 annual report with
15 that particular filing. While that filing was made on
16 the 19th, as I had mentioned, of course, we reflect in
17 our records a receipt dated the annual report of the
18 9th.

19 But with regard to the -- the pursuit of -- of
20 penalties, Staff's view is that by their own admission
21 in their own filing, particularly of their
22 February 19th notice of satisfaction, which they
23 indicate the filing and have act-- actually attached
24 their '02 annual report, that that establishes the
25 material fact that indeed the 2002 annual report was

1 filed late, so --

2 JUDGE THOMPSON: Would you like to make a
3 motion for summary determination at this time?

4 MR. BERLIN: Yes, Your Honor. Staff intends
5 to motion for summary disposition so that the
6 Commission may -- may make a ruling on the pleadings
7 and on the record.

8 And I understand that's, according to the
9 rules, to be done in writing -- in kind of written
10 motion.

11 JUDGE THOMPSON: I believe that is what the
12 rule contemplates.

13 MR. BERLIN: And so it is my intention to file
14 a motion for summary disposition.

15 JUDGE THOMPSON: Very good.

16 Anything else?

17 (No response.)

18 JUDGE THOMPSON: There being nothing further,
19 we will adjourn the recorded portion of the prehearing
20 conference at this time. And since you guys are the
21 only ones who showed up, I guess that adjourns the
22 whole thing.

23 WHEREUPON, the on-the-record portion of the
24 prehearing conference was concluded.

25

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