

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

DOCKET NO. 000075-TP(PHASE I)  
ORDER NO. PSC-02-0634-AS-TP  
ISSUED: May 7, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

ORDER APPROVING STIPULATION

BY THE COMMISSION:

On January 21, 2000, this docket was established to investigate the appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996 (the Act). An administrative hearing regarding issues delineated for Phase I of this docket was conducted on March 7 - 8, 2001. In accordance with Order No. PSC-00-2229-PCO-TP, issued November 22, 2000, as modified by Order No. PSC-01-0863-PCO-TP, issued April 5, 2001, post-hearing briefs were filed on April 18, 2001. Thereafter, on April 19, 2001, the Federal Communications Commission (FCC) released its decision in FCC Dockets Nos. 96-98 and 99-68 on matters regarding intercarrier compensation for telecommunications traffic to Internet Service Providers that had been remanded to the FCC for further determination by the Court of Appeals for the District of Columbia Circuit. On April 27, 2001, Order No. PSC-01-1036-PCO-TP was issued requiring all parties in this proceeding to file supplemental posthearing briefs addressing the decision of the FCC in Dockets Nos. 96-98 and 99-68 (FCC Order) within 10 days of the issuance of the FCC's Order memorializing the April 19, 2001, decision. On that same day, the FCC Order was memorialized in Docket Nos. 96-98 and 99-68.

DOCUMENT NUMBER-DATE

04918 MAY-78

FPSC-COMMISSION CLERK

On May 2, 2001, AT&T Communications of the Southern States, Inc., TCG of South Florida, Global NAPS, Inc., MediaOne Florida Telecommunications, Inc., Time Warner Telecom of Florida, LP, Florida Cable Telecommunications Association, Inc., Allegiance Telecom of Florida, Inc. and the Florida Competitive Carriers Association (collectively "Joint Movants") filed a Joint Motion for Extension of Time to File Supplemental Posthearing Brief. Order No. PSC-01-1094-PCO-TP, issued May 8, 2001, was issued granting the Joint Movants' Motion for Extension of Time.

On March 27, 2002, the parties filed a Joint Stipulation, wherein the parties have suggested that we defer action on the issues raised in Phase I of this docket. In support of this proposal, the parties state that on April 27, 2001, the FCC issued its ruling in the case of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Order on Remand and Report Order (ISP Remand Order), FCC 01-131. The parties assert that the *ISP Remand Order* establishes certain nationally applicable rules regarding intercarrier compensation for ISP-bound traffic. Therein, the parties contend that the FCC has asserted jurisdiction over ISP-bound traffic and hence, this Commission should decline to issue a ruling on the issues in Phase I, which addresses reciprocal compensation for ISP-bound traffic. The parties assert that although the *ISP Remand Order* is under court review, it has not been stayed and is, therefore, binding.

Given the fact that the *ISP Remand Order* is binding and currently on appeal, the parties contend that we should decline to issue a ruling on the issues in Phase I at this time, but should preserve the hearing record. If the FCC or the courts subsequently rule that ISP-bound traffic is not entirely within the jurisdiction and control of the FCC, the parties agree that further proceedings before this Commission addressing Phase I issues should then be reinitiated either at the request of any party to the proceeding or on our own initiative in the manner prescribed in the stipulation.

Upon consideration, we agree that the *ISP Remand Order* does classify ISP-bound traffic as interstate and, therefore, under the jurisdiction of the FCC. In its opinion, the FCC stated that "traffic delivered to an ISP is predominantly interstate access

traffic subject to section 201 of the Act . . . ." See ISP Remand Order at ¶1. Although the FCC stated that the *ISP Remand Order* ". . . does not preempt any state commission decision regarding a compensation mechanism for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here," it did, however, state that "[b]ecause we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue." See ISP Remand Order at ¶82. The FCC's intent to preempt a state commission's authority to address reciprocal compensation for ISP-bound traffic is clear.

In view of the fact that Phase I of this docket focused on issues concerning the establishment of an intercarrier compensation mechanism for the delivery of ISP-bound traffic, we approve the stipulation and shall defer ruling on the issues delineated in Phase I. Furthermore, we find that the proposal in the stipulation provides a reasonable means to reinitiate our consideration of these issues should the FCC's decision be modified or overturned. Based on the foregoing, we hereby approve the Joint Stipulation, attached and incorporated herein by reference as Attachment A, filed by parties on March 27, 2002.

It is therefore

ORDERED by the Florida Public Service Commission that the Joint Stipulation, which is attached and incorporated herein by reference as Attachment A to this Order, is hereby approved. It is further

ORDERED that this Docket shall remain open pending the resolution of the issues addressed in Phase II of this proceeding.

ORDER NO. PSC-02-0634-AS-TP  
DOCKET NO. 000075-TP(PHASE I)  
PAGE 4

By ORDER of the Florida Public Service Commission this 7th  
Day of May, 2002.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

( S E A L )

BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and

ORDER NO. PSC-02-0634-AS-TP  
DOCKET NO. 000075-TP(PHASE I)  
PAGE 5

Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ORDER NO. PSC-02-0634-AS-TP  
DOCKET NO. 000075-TP (PHASE I)  
PAGE 6

DOCKET NO. 000075-TP (Phase I)  
DATE: APRIL 11, 2002

## ATTACHMENT A

### BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:

Investigation into appropriate methods to compensate carriers for Docket No. 000075-TP exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

Docket No. 000075-TP

#### STIPULATION

The undersigned parties to the above-captioned proceeding, and the Staff of the Florida Public Service Commission ("FPSC") hereby stipulate as follows:

1. On April 27, 2001, the FCC issued its ruling in the case of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, *Order on Remand and Report and Order*, FCC No. 01-131 (rel. Apr. 27, 2001) ("*ISP Remand Order*"). The *ISP Remand Order* establishes certain nationally applicable rules regarding intercarrier compensation for ISP-bound traffic. The *ISP Remand Order* is under court review, but it has not been stayed and is therefore legally effective. As a result, the *ISP Remand Order* has established a nationwide resolution of the issues presented in Phase I of this proceeding.

2. In light of the *ISP Remand Order*, the Florida Public Service Commission ("FPSC") should decline to rule on the issues presented in Docket No. 000075-TP, Phase I, at this time, and should suspend any further activity in this Docket pertaining to the Phase I issues.

ORDER NO. PSC-02-0634-AS-TP  
DOCKET NO. 000075-TP (PHASE I)  
PAGE 7

DOCKET NO. 000075-TP (Phase I)  
DATE: APRIL 11, 2002

3. Because the *ISP Remand Order* is currently subject to court review, however, the record from the Phase I hearing conducted on March 7-9, 2001, should be preserved, as described below.

4. The *ISP Remand Order* may be modified as a result of court review or further FCC action. If the FCC and/or the courts subsequently rule that ISP-bound traffic is not entirely within the jurisdiction and control of the FCC, or that state regulatory bodies have jurisdiction with respect to intercarrier compensation arrangements for such traffic notwithstanding its interstate character, further proceedings before the FPSC addressing the Phase I issues may be reinitiated either at the request of any party to this proceeding or on the FPSC's own initiative. The FPSC should, at the time of any request to reinitiate consideration of the Phase I issues, address and resolve any questions that may exist at that time with regard to its jurisdiction to proceed.

5. The undersigned parties stipulate that if such further proceedings are initiated, the record from the Phase I hearing should be deemed applicable as preserved, and should be incorporated into the record of the reinitiated proceedings in full.<sup>1</sup> The undersigned parties hereby waive any objection that they might otherwise have to the inclusion of the record from the Phase I hearing into the record of such further proceedings, subject only to objections as to the admissibility of particular evidence which were actually made on the record during the Phase I hearing. Any such objections actually made during the Phase I hearings shall be deemed preserved.

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<sup>1</sup> References in this stipulation to "the undersigned parties" are intended to include the Commission staff as well.

ORDER NO. PSC-02-0634-AS-TP  
DOCKET NO. 000075-TP (PHASE I)  
PAGE 8

DOCKET NO. 000075-TP (Phase I)  
DATE: APRIL 11, 2002

6. Because the record from Phase I shall be incorporated into the record of any future proceeding on the Phase I issues, the undersigned parties hereby stipulate that they will not seek to introduce additional testimony on the issues addressed in the Phase I hearing, and stipulate that they will limit their presentation in such future proceedings to supplemental briefs, addressing legal and regulatory decisions and developments occurring between the time of the Phase I hearing and the time of such future proceedings, provided, however, that the undersigned parties reserve their right to request the FPSC to permit the submission of supplemental testimony in order to address significant changes in factual circumstances occurring between the time of the Phase I hearing and the time of such future proceedings. Changes in regulatory or policy considerations shall be addressed in briefs, not in testimony.

7. If, upon the conclusion of Phase II of this proceeding, the state of the law regarding the jurisdiction over ISP-bound traffic remains as set forth in the *ISP Remand Order*, the undersigned parties stipulate that Docket No. 000075-TP may be closed, subject to the terms of this stipulation regarding reinitiating proceedings to address the Phase I issues.

8. Even if Docket No. 000075-TP is closed in accordance with Point 7 of this stipulation, if the state of the law regarding the Phase I issues changes as a result of further judicial or FCC proceedings, then Points 3 - 6 of this stipulation should be deemed applicable to any new Docket opened to address the same issues identified in Phase I of Docket No. 000075-TP.

9. This stipulation may be executed in multiple counterparts.

10. This stipulation may not be considered binding in any way upon the parties or the FPSC with regard to complaints arising under agreements prior to FCC Order 01-131.



ORDER NO. PSC-02-0634-AS-TP  
DOCKET NO. 000075-TP (PHASE I)  
PAGE 9

DOCKET NO. 000075-TP (Phase I)  
DATE: APRIL 11, 2002

Respectfully submitted this 25<sup>th</sup> day of March, 2002.

INSERT OUR SIGNATURE PAGE AND THEN ATTACH ALL  
OTHERS AFTER

ORDER NO. PSC-02-0634-AS-TP  
DOCKET NO. 000075-TP (PHASE I)  
PAGE 10

DOCKET NO. 000075-TP (Phase I)  
DATE: APRIL 11, 2002

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FPSC with regard to complaints arising under agreements prior to FCC Order 01-131.

Respectfully submitted,

STAFF OF THE FLORIDA PUBLIC  
SERVICE COMMISSION

SPRINT COMMUNICATIONS COMPANY  
LIMITED PARTNERSHIP and SPRINT-  
FLORIDA, INCORPORATED

---

Felicia Banks  
Staff Counsel  
Its Attorney

---

Susan S. Masterson  
Their Attorney

AT&T COMMUNICATIONS OF THE  
SOUTHERN STATES; TCG OF SOUTH FLO-  
RIDA; MEDIAONE FLORIDA COMMUNI-  
CATIONS, INC.; ALLEGIANCE TELECOM  
OF FLORIDA, INC; LEVEL 3 COMMU-  
NICATIONS, LLC; and US LEC OF  
FLORIDA, INC.

FLORIDA CABLE TELECOMMUNICA-  
TIONS ASSOCIATION

---

Michael A. Gross  
Vice President — Regulatory Affairs &  
Regulatory Counsel  
Its Attorney

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Kenneth A Hoffman  
Martin P. McDonnell  
Their Attorneys

TIME WARNER TELECOM OF FLORIDA,  
L.P.

---

Morton J. Posner  
Additional Counsel for Allegiance Telecom of  
Florida, Inc.

---

Peter M. Dunbar, Esq.  
Karen M. Camechis, Esq.  
Their Attorneys

GLOBAL NAPS, INC.

BELLSOUTH TELECOMMUNICATIONS,  
INC.

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Christopher W. Savage  
Jon C. Moyle  
Its Attorneys

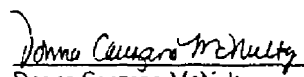
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*James Meza III*  
James Meza  
Kip Edenfield  
Its Attorneys

ORDER NO. PSC-02-0634-AS-TP  
DOCKET NO. 000075-TP (PHASE I)  
PAGE 11

DOCKET NO. 000075-TP (Phase I)  
DATE: APRIL 11, 2002

MCI METRO ACCESS TRANSMISSION SERVICES, LLC;  
MCI WORLDCOM COMMUNICATIONS, INC. AND  
INTERMEDIA COMMUNICATIONS INC.

  
Donna Canzano McNulty  
WorldCom, Inc.  
325 John Knox Road  
The Atrium Bldg., Ste. 105  
Tallahassee, FL 32303  
(850) 422-1254  
Their attorney.

ORDER NO. PSC-02-0634-AS-TP  
DOCKET NO. 000075-TP (PHASE I)  
PAGE 12

DOCKET NO. 000075-TP (Phase I)  
DATE: APRIL 11, 2002

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Respectfully submitted,

STAFF OF THE FLORIDA PUBLIC  
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SPRINT COMMUNICATIONS COMPANY  
LIMITED PARTNERSHIP and SPRINT-  
FLORIDA, INCORPORATED

\_\_\_\_\_  
Felicia Banks  
Staff Counsel  
Its Attorney

\_\_\_\_\_  
Susan S. Masterson  
Their Attorney

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\_\_\_\_\_  
Michael A. Gross  
Vice President — Regulatory Affairs &  
Regulatory Counsel  
Its Attorney

*Martin P. McDonnell*

\_\_\_\_\_  
Kenneth A Hoffman  
Martin P. McDonnell  
Their Attorneys

TIME WARNER TELECOM OF FLORIDA,  
L.P.

*Morton J. Posner for*

\_\_\_\_\_  
Morton J. Posner  
Additional Counsel for Allegiance Telecom of  
Florida, Inc.

\_\_\_\_\_  
Peter M. Dunbar, Esq.  
Karen M. Camechis, Esq.  
Their Attorneys

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PAGE 13

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Respectfully submitted,

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SERVICE COMMISSION

SPRINT COMMUNICATIONS COMPANY  
LIMITED PARTNERSHIP and SPRINT-  
FLORIDA, INCORPORATED

\_\_\_\_\_  
Felicia Banks  
Staff Counsel  
Its Attorney

\_\_\_\_\_  
Susan S. Masterson  
Their Attorney

AT&T COMMUNICATIONS OF THE  
SOUTHERN STATES; TCG OF SOUTH FLO-  
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Michael A. Gross  
Vice President — Regulatory Affairs &  
Regulatory Counsel  
Its Attorney

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Martin P. McDonnell  
Their Attorneys

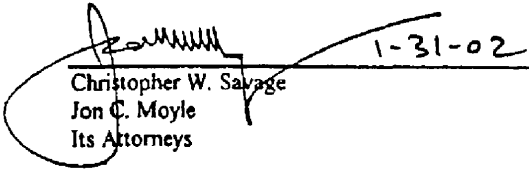
TIME WARNER TELECOM OF FLORIDA,  
L.P.

\_\_\_\_\_  
Morton J. Posner  
Additional Counsel for Allegiance Telecom of  
Florida, Inc.

\_\_\_\_\_  
Peter M. Dunbar, Esq.  
Karen M. Camechis, Esq.  
Their Attorneys

GLOBAL NAPS, INC.

BELLSOUTH TELECOMMUNICATIONS,  
INC.

  
\_\_\_\_\_  
Christopher W. Savage  
Jon C. Moyle  
Its Attorneys

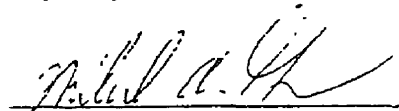
\_\_\_\_\_  
James Meza  
Kip Edenfield  
Its Attorneys

ORDER NO. PSC-02-0634-AS-TP  
DOCKET NO. 000075-TP (PHASE I)  
PAGE 14

DOCKET NO. 000075-TP (Phase I)  
DATE: APRIL 11, 2002

The FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION hereby  
agrees to the Stipulation submitted in Phase I of Florida Public Service Commission Docket. In  
re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject  
to Section 251 of the Telecommunications Act of 1996. Docket No. 000075-TP.

Respectfully submitted,



Michael A. Gross  
Vice President, Regulatory Affairs  
& Regulatory Counsel  
Florida Cable Telecommunications Association  
246 E. Park Avenue  
Tallahassee, FL 32303  
850/681-1990  
850/681-9676 (fax)  
mgross@fcta.com

Dated this 25<sup>th</sup> day of January, 2002.

ORDER NO. PSC-02-0634-AS-TP  
DOCKET NO. 000075-TP (PHASE I)  
PAGE 15

DOCKET NO. 000075-TP (Phase I)  
DATE: APRIL 11, 2002

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Respectfully submitted.

STAFF OF THE FLORIDA PUBLIC  
SERVICE COMMISSION

SPRINT COMMUNICATIONS COMPANY  
LIMITED PARTNERSHIP and SPRINT-  
FLORIDA, INCORPORATED

---

Felicia Banks  
Staff Counsel  
Its Attorney

---

Susan S. Masterson  
Their Attorney

AT&T COMMUNICATIONS OF THE  
SOUTHERN STATES; TCG OF SOUTH FLO-  
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FLORIDA CABLE TELECOMMUNICA-  
TIONS ASSOCIATION

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Michael A. Gross  
Vice President — Regulatory Affairs &  
Regulatory Counsel  
Its Attorney

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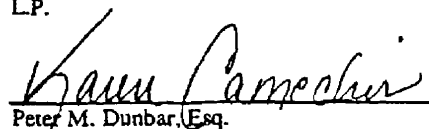
Kerneth A Hoffman  
Martin P. McDonnell  
Their Attorneys

TIME WARNER TELECOM OF FLORIDA,  
L.P.

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Additional Counsel for Allegiance Telecom of  
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GLOBAL NAPS, INC.

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Its Attorneys

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James Meza  
Kip Edenfield  
Its Attorneys

ORDER NO. PSC-02-0634-AS-TP  
DOCKET NO. 000075-TP (PHASE I)  
PAGE 16

DOCKET NO. 000075-TP (Phase I)  
DATE: APRIL 11, 2002

VERIZON FLORIDA INC.

A handwritten signature in cursive script, appearing to read "Kimberly Caswell", followed by the word "for" in a smaller, less distinct script.

Kimberly Caswell  
Its Attorney



ORDER NO. PSC-02-0634-AS-TP  
DOCKET NO. 000075-TP (PHASE I)  
PAGE 17

DOCKET NO. 000075-TP (Phase I)  
DATE: APRIL 11, 2002

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY  
LIMITED PARTNERSHIP and SPRINT-  
FLORIDA, INCORPORATED



Susan S. Masterton  
1313 Blairstone Road  
P.O. Box 2214  
Tallahassee, FL 32316-2214  
Phone: (850) 599-1560

Their Attorney

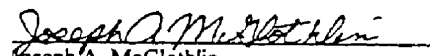
ORDER NO. PSC-02-0634-AS-TP  
DOCKET NO. 000075-TP (PHASE I)  
PAGE 18

DOCKET NO. 000075-TP (Phase I)  
DATE: APRIL 11, 2002

10 This stipulation may not be considered binding in any way upon the parties or the  
FPSC with regard to complaints arising under agreements prior to FCC Order 01-131.

Respectfully submitted,

FLORIDA COMPETITIVE  
CARRIERS ASSOCIATION

  
Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin, Davidson,  
Decker, Kaufman, Arnold & Steen, P.A.

Its Attorneys

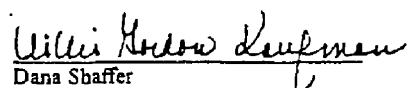
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DOCKET NO. 000075-TP (PHASE I)  
PAGE 19

DOCKET NO. 000075-TP (Phase I)  
DATE: APRIL 11, 2002

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Respectfully submitted,

XO FLORIDA, INC.



Dana Shaffer

Vice President, Regional Regulatory Counsel

Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin, Davidson,  
Decker, Kaufman, Arnold & Steen, PA

Its Attorneys

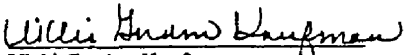
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PAGE 20

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Respectfully submitted,

KMC TELECOM, INC.,  
KMC TELECOM II, INC.  
and KMC TELECOM, III, INC.



Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin, Davidson,  
Decker, Kaufman, Arnold & Steen, PA

Its Attorneys

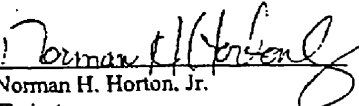
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PAGE 21

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Respectfully submitted,

e.spire COMMUNICATIONS, INC.

  
Norman H. Horton, Jr.  
Their Attorney