

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint against KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC for alleged failure to pay intrastate access charges pursuant to its interconnection agreement and Sprint's tariffs and for alleged violation of Section 364.16(3)(a), F.S., by Sprint-Florida, Incorporated.

DOCKET NO. 041144-TP
ORDER NO. PSC-05-0838-CFO-TP
ISSUED: August 18, 2005

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION OF
DOCUMENT NO. 06558-05 (CROSS-REFERENCED DOCUMENTS NOS. 02991-05,
02862-05, 02993-05, 02995-05, 02997-05, 03112-05, 03237-05,
03296-05, 03359-05, 04379-05, 04460-05, 04929-05)

On September 24, 2004, Sprint-Florida, Incorporated (Sprint) filed its complaint against KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC (collectively KMC) for alleged failure to pay intrastate access charges pursuant to its interconnection agreement and Sprint's tariffs, and for alleged violation of Section 364.16(3)(a), F.S.

On October 15, 2004, KMC filed a motion to dismiss, and on October 21, 2004, Sprint filed its response to KMC's motion to dismiss. On December 3, 2004, Order No. PSC-04-1204-FOF-TP was issued denying KMC's motion to dismiss. On January 19, 2005, the parties met to identify issues to be resolved in this proceeding. On January 31, 2005, the Order Establishing Procedure, Order No. PSC-05-0125-PCO-TP, was issued. Thereafter, the schedule was revised by Order No. PSC-05-0402-PCO-TP, issued April 18, 2005. This hearing in this matter was held on July 12, 2005.

On July 29, 2005, KMC filed a Request for Confidential Classification for Hearing Exhibit 7, Document No. 06558-05 (Cross-referenced Documents Nos. 02991-05, 02862-05, 02993-05, 02995-05, 02997-05, 03112-05, 03237-05, 03296-05, 03359-05, 04379-05, 04460-05, 04929-05). Specifically, KMC seeks confidentiality of specific discovery responses included in Exhibit 7. KMC contends that this document contains KMC customer account information that it is required to protect in accordance with Section 364.24, Florida Statutes, as well as pursuant to the parties' interconnection agreement. KMC also contends that the information includes proprietary confidential business information such as services, and the correlating prices, that PointONE purchased, as well as customer telephone numbers. KMC contends the information has not been publicly released.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Specifically, the information at issue includes the following:

a: **DN 02991-05**: Filed March 28, 2005, KMC's response to Sprint's 2nd Interrogatories & 2nd PODs, 23(a-d),25(a), 26(b), 29 (b), 31(a), 36(a-b). This contains KMC customer information.

b: **DN 02862-05** and **DN 02993-05**: Filed March 23 and 28, 2005, respectively, this includes KMC's 3rd supplemental response to Sprint's 1st Interrogatories and PODs. This contains KMC customer information.

c: **DN 02995-05**: Filed March 28, 2005, KMC's supplemental responses to Sprint's 1st Set of Interrogatories, (16) consists of proprietary customer information for KMC services.

d: **DN 02997-05**: Filed March 28, 2005, KMC's supplemental response to Sprint's 1st Set of Interrogatories (part of 15), consists of proprietary customer information for KMC services. The request for confidential classification is limited to bate stamp page numbers 000295 through 000302 of the supplemental response to No. 15. The remaining pages of DN 02997-05 were withdrawn from the previously filed claim of confidentiality by DN 07323-05 also filed on July 29, 2005.

e: **DN 03112-05**: Filed March 30, 2005, KMC's response to Sprint's 3rd Set of Interrogatories, consists of KMC proprietary customer information. This request is limited to the response for #39. The remaining pages of DN 03112-05 were withdrawn from the previously filed claim of confidentiality by DN 07323-05.

f: **DN 03237-05**: Filed April 1, 2005, KMC's revised response to Sprint's 2nd set of Interrogatories (38a), consists of proprietary business information on direct interconnection trunking with other carriers.

g: **DN 03296-05**: Filed April 4, 2005, KMC's supplemental response to Sprint's 2nd POD (23), consists of proprietary customer detail records from KMC's switch.

h: **DN 03359-05**: Filed April 5, 2005, KMC's supplemental response to Sprint's 2nd POD (12), consists of confidential customer bills.

i: **DN 04379-05**: Filed May 4, 2005, KMC's 4th supplemental response to Sprint's 1st Set of Interrogatories (15) and 1st POD (5), consists of KMC internal communications regarding service arrangements and prices.

j: **DN 04460-05**: Filed May 6, 2005, KMC's response to Staff's 1st Set of Interrogatories (attachment to 6), consists of confidential business information which describes KMC's relationship with another carrier.

k: **DN 04929-05**: Filed May 19, 2005, Exhibits 8 & 9 of KMC's Motion to Compel Responses to 1st and 2nd Set of Interrogatories and 1st and 3rd PODs, consists of Sprint internal proprietary communications.

Pursuant to Section 119.01, Florida Statutes, documents submitted to this Commission are presumed to be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." The Public Records Law is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. Seminole County v. Wood, 512 So. 2d 1000 (Fla. 5th DCA 1987), *rev. denied* 520 So. 2d 586 (Fla. 1986). The determination of whether information is proprietary confidential business information is a matter of discretion. Florida Society of Newspaper Editors, Inc. v. Florida Public Service Commission, 543 So. 2d 1262, 1265 (1st DCA 1989) *rehearing den.* June 12, 1989. When determining whether information should be deemed confidential, the public interest in disclosing the information must be weighed against the potential harm to the entity if the information were disclosed.

The only exceptions to the presumption that documents should be accessible to the public are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. Rule 25-22.006(4)(c), Florida Administrative Code, provides that the Company must either demonstrate that the documents fall within one of the statutory examples of "proprietary confidential business information" as defined by Section 364.183(3), Florida Statutes, or, if none of the examples are applicable, show that disclosure of the information will harm the Company's ratepayers or its business operations.

Section 364.183(3), Florida Statutes, in pertinent part, provides:

The term "proprietary confidential business information" means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.

Based on the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes, it appears that the information for which KMC seeks confidential classification is information that, if disclosed, would cause harm to the company or its ratepayers because disclosure would violate Section 364.24, Florida Statutes, as well as contractual terms. Thus, this information qualifies as proprietary business information under Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. As such, KMC's Request

for Confidential Classification of Hearing Exhibit 7, Document No. 06558-05 (Cross-referenced Documents Nos. 02991-05, 02862-05, 02993-05, 02995-05, 02997-05, 03112-05, 03237-05, 03296-05, 03359-05, 04379-05, 04460-05, 04929-05) is hereby granted to the extent set forth in this Order.

It is therefore

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that KMC's Request for Confidential Classification of Hearing Exhibit 7, Document No. 06558-05 (Cross-referenced Documents Nos. 02991-05, 02862-05, 02993-05, 02995-05, 02997-05, 03112-05, 03237-05, 03296-05, 03359-05, 04379-05, 04460-05, 04929-05) is hereby granted to the extent set forth in this Order. It is further

ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the document specified herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 364.183. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period. It is further

ORDERED that this Docket shall remain open.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 18th day of August, 2005.

/s/ Rudolph "Rudy" Bradley
RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

This is a facsimile copy. Go to the Commission's Web site, <http://www.floridapsc.com> or fax a request to 1-850-413-7118, for a copy of the order with signature.

(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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.