

RICHARD M. RINDLER
ATTORNEY AT LAW

SWIDLER
&
BERLIN
CHARTERED

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DIRECT DIAL
(202)424-7771

April 11, 1997

VIA FEDERAL EXPRESS

170242-TP

Mrs. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Dear Ms. Bayo:

Enclosed is an original and fifteen (15) copies of a Prehearing Statement of KMC
Telecom, Inc. Also enclosed is a diskette formatted in WordPerfect 6.0 for Windows.

Please date-stamp and return in the enclosed stamped envelope a copy of the Statement.

Very truly yours,

Richard M. Rindler

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of)

KMC TELECOM, INC.)

Petition for Arbitration Pursuant to 47 U.S.C.)
§ 252(b) of Interconnection Rates, Terms, and)
Conditions with)

SPRINT UNITED-CENDEL OF FLORIDA, INC.)

) Docket No. 970242-TP

) Filed: April 14, 1997

**PREHEARING STATEMENT OF
KMC TELECOM, INC.**

Pursuant to the Interim Order Establishing Procedure issued April 1, 1997, KMC Telecom, Inc. ("KMC"), by its undersigned attorneys, hereby files this Prehearing Statement concerning KMC's Petition for Arbitration of Interconnection Rates, Terms, and Conditions ("Petition") with Sprint United-Centel of Florida, Inc. (now known as Sprint-Florida) ("Sprint").

- (a) The Name of All Known Witnesses That May Be Called by KMC, and the Subject Matter of Their Testimony

KMC may call Tricia Breckenridge to testify as to the nature of the Sprint/KMC negotiations and KMC's intent to opt into the MFS Communications Company, Inc. Partial Interconnection Agreement with Sprint which this Commission approved on February 28, 1997. Ms. Breckenridge may further be called to testify with respect to any other matter in connection with KMC's Petition.

KMC may call Robert Walker to testify as to the technical aspects of the KMC network if that is determined to be an issue.

KMC may further call such other witnesses as may be appropriate and necessary based upon, among other things, the course of the proceedings, matters learned in discovery, and other factors.

(b) A Description of All Known Exhibits That May Be Used by KMC, Whether They May Be Identified on a Composite Basis, and the Witness Sponsoring Each

Tricia Breckenridge, on behalf of KMC, may sponsor Exhibits TB-1 through TB-3 which were attached to the Petition. Exhibit TB-1 is KMC's September 13, 1996 letter to Sprint requesting interconnection negotiations. Exhibit TB-2 is Sprint's December 10, 1996 letter concerning the negotiations. Exhibit TB-3 is the September 19, 1996 Partial Interconnection Agreement for LATA 458 between United Telephone Company of Florida and MFS Communications Company, Inc.

KMC may further use such other exhibits as may be appropriate and necessary based upon, among other things, the course of the proceedings, matters learned in discovery and documents produced, and other factors.

(c) Statement of KMC's Basic Position in the Proceeding

KMC seeks Commission arbitration of the sole issue of whether Sprint, while permitting KMC to opt into an approved interconnection agreement, may refuse to allow KMC to opt into one provision of the agreement. KMC believes that under Section 252(i), KMC is entitled to opt into the agreement and that Sprint may not refuse to allow KMC to opt into a provision in an approved interconnection agreement.

The MFS/Sprint Partial Interconnection Agreement provides for a composite reciprocal compensation rate of .0055 for local call termination regardless of whether the call terminates through a tandem. In subsequent arbitrations the Commission determined that a CLEC should not receive compensation for a function it did not perform. These later arbitrated decisions in no way affect the MFS reciprocal compensation provision or remove Sprint's statutory obligation to make available the agreed-upon provision to a party seeking to opt into that agreement.

The Commission in its February 28 order approving the MFS Agreement dealt with Sprint's attempt to abandon the very provision at issue here. Sprint sought to have the Commission reject the agreed-upon provision on the same grounds it argues here -- namely, that subsequent to Sprint's agreement, the Commission in arbitrated proceedings reached a different result. The Commission correctly rejected Sprint's attempt and approved the agreement including the composite reciprocal compensation rate.

(d) **KMC's Prehearing Positions on Questions of Fact Which KMC Considers At Issue**

KMC does not believe that there are any issues of fact in dispute in these issues properly before the Commission in this proceeding.

(c) **KMC's Prehearing Positions on the Question of Law Which KMC Considers at Issue and the Witnesses Who Will Address the Issue**

1. Under Section 252(i) of the Telecommunications Act of 1996 is Sprint permitted to refuse to allow a carrier to opt into a provision in a previously approved interconnection agreement?

No. Sprint may not refuse to permit KMC to opt into one provision of an approved interconnection agreement. Section 252(i) is clear in stating that "a local carrier shall make available any interconnection service . . . provided under an agreement approved under this section [252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." (emphasis added)

2. Is Issue 1 arbitratable under Section 252 of the Telecommunications Act of 1996?

Yes. Section 252(b)(1) states that a carrier may petition a state commission to arbitrate any open issues resulting from the negotiations. Under Section 251(c)(1), the duty to negotiate includes the particular terms and conditions of agreements to fulfill the duties in Section 251(b)(1)-(5). Section 252(b)(5) is the duty to establish reciprocal compensation arrangements for transport and termination of telecommunications.

3. If the Commission determines Issue 1 in the affirmative, should Sprint be required to pay KMC for tandem switching if KMC does not perform that function for Sprint?

KMC does not believe this issue is before the Commission in this proceeding and the inclusion of this issue may raise factual issues which have not been put in dispute. If it is deemed to be before the Commission, KMC believes that while the Eighth Circuit stay of the FCC rules is in effect this Commission has found that in order to receive compensation for tandem switching a carrier must provide a facility performing that function.

(g) Statement of Issues That Have Been Stipulated to by the Parties

No issues have been formally stipulated as of yet by the parties. However, Sprint and KMC have reached an agreement in principle on all other issues and expect to shortly file an

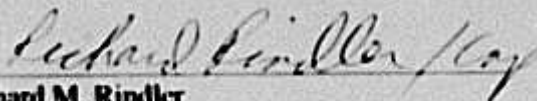
interconnection agreement reflecting that agreement for approval by the Commission.

(b) A Statement of All Pending Motions

KMC requests consideration of its Motion To Accept Late Filing. No opposition was filed to that motion.

To the extent matters arise in the course of these proceedings and/or in discovery, KMC reserves the right to amend its positions or list of issues, witnesses, and exhibits accordingly.

Respectfully submitted,



Richard M. Rindler
Larry R. Freedman
SWIDLER & BERLIN, CHARTERED
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
Phone: (202) 424-7500
Fax: (202) 424-7645

Attorneys for KMC Telecom, Inc.

Dated: April 11, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April 1997 copies of the foregoing Prehearing Statement of KMC Telecom, inc. was served via overnight mail to the following:

John P. Fons, Esq.
McFarlane, Ausley, Ferguson & McMullen
227 South Calhoun Street
Tallahassee, FL 32302

Jerry Johns, Esquire
Sprint
555 Lake Border Drive
Apopka, FL 32703

Charlie Pellegrini, Esq.
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850



Richard M. Rindler