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August 11, 2004

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Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 031047-TP

Dear Ms. Bayó:

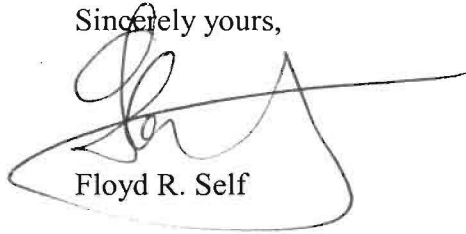
Enclosed for filing on behalf of KMC Telecom III, LLC, KMC Telecom V, Inc., and KMC Data LLC, Inc. are an original and fifteen copies of Motion of KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC's to Hold Proceeding in Abeyance in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

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- OTH Kim P.

Sincerely yours,



Floyd R. Self

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*ok copy
Kim P. ✓*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of Petition of KMC Telecom)	
III LLC, KMC Telecom V, Inc., and KMC)	
Data LLC for Arbitration of an Interconnection)	Docket No. 031047-TP
Agreement with Sprint-Florida, Incorporated)	Filed: August 11, 2004
Pursuant to Section 252(b) of the Communications)	
Act of 1934, as Amended)	

**MOTION OF KMC TELECOM III LLC, KMC TELECOM V, INC.,
AND KMC DATA LLC TO HOLD PROCEEDING IN ABEYANCE**

KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC (collectively “KMC”) hereby submit this Motion and respectfully request that the Commission hold this arbitration proceeding in abeyance for a period of 90 days. In so doing, KMC requests that the Commission suspend all pending deadlines and consideration of any pending motions until after November 10, 2004. In support of this Motion, KMC states as follows:

1. This arbitration was filed by KMC on November 12, 2003. Prior to the filing of the Petition for Arbitration, the parties were negotiating the appropriate terms and conditions for the Master Interconnection and Resale Agreement (“Agreement”) based on the law effective during the negotiations. In a decision dated March 2, 2004 the United States Court of Appeals for the District of Columbia Circuit, in *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (“*USTA I*”), affirmed in part, vacated in part, and remanded in part certain rules of the Federal Communications Commission (“FCC”) that govern the rights and obligations between ILECs and CLECs regarding services and unbundled network elements. While the effectiveness of the *USTA II* decision was initially stayed by the court, the court’s mandate

was ultimately issued on June 15, 2004. At this time, certain of the FCC rules applicable to Sprint's obligation to provide KMC unbundled network elements were vacated and became the subject of consideration on remand. The FCC has apparently voted to adopt interim rules and issue them in the very near future, which KMC understands will then be followed by new permanent rules within approximately six months.

2. While the parties had successfully closed all of the UNE issues that had been identified in the Petition for Arbitration, Sprint has just recently decided to propound a new UNE Amendment that Sprint asserts is reflective of the *USTA II* decision. Furthermore, Sprint has now taken the position – five months after the *USTA II* decision and just days before the interim rules are issued – that the parties must incorporate the fleeting *USTA II* environment into their interconnection agreement.

3. Even setting aside the lack of any reasonable basis for incorporating such temporary conditions into a permanent agreement, the infeasibility and inefficiency of attempting to shoehorn these issues into the arbitration at this time militate against such an approach. To begin with, Sprint's proposed amendment does not even purport to amend the parties' draft Agreement, but rather amends Sprint's generic interconnection template (to which the parties' Agreement bears little resemblance). In light of this impediment, and the fact that the terms were just recently propounded, the parties have yet to engage in any negotiations on this subject. As a result, there is simply insufficient time to negotiate the terms, identify open issues, revise the issue matrix and file testimony prior to the hearing currently scheduled for the middle of next month.¹

¹ Even if the Commission and the parties were to attempt such an impracticable task, it may be safely assumed that the hearing would require more than the one day currently scheduled. From an efficiency standpoint, it does not make sense to have two separate

4. In consideration of the circumstances noted above, KMC respectfully requests that the Commission hold this proceeding in abeyance to address the effect of the *USTA II* decision and the forthcoming interim rules on the terms, conditions and rates that should be included in the Agreement, as well as to identify any additional issues for resolution in this arbitration. KMC (and we believe, Sprint) agrees that no new issues may be raised in this arbitration proceeding other than those that result from the parties' negotiations regarding the post-*USTA II*/interim rules regulatory framework.

5. The proposed abeyance would provide KMC and Sprint with the time necessary to incorporate into the Agreement language reflective of the *USTA II* decision and the FCC's interim rules. The abeyance would promote administrative efficiency, in that it would permit the parties to identify any and all issues in need resolution by the Commission, and thereby avoid a separate negotiation and arbitration of an interconnection agreement terms to reflect the *USTA II* decision and its progeny. In other words, it is nonsensical to ignore the new realities created by the *USTA II* decision and the FCC's interim rules. During the abeyance period, the parties will also continue their efforts to close the few remaining issues already teed up in the arbitration.

hearings, particularly since providing more time for the parties to negotiate will increase the likelihood that the parties will close more (and therefore arbitrate fewer) issues.

In light of the foregoing, KMC respectfully requests that the Commission hold this arbitration proceeding in abeyance for a period of 90 days. Upon the conclusion of the 90 day period, KMC proposes to file a supplement to its Petition for Arbitration and a revised issues matrix to identify all remaining issues in need resolution by the Commission.

Duly submitted this 11th day of August, 2004

By:



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