

ORIGINAL

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Sent: Wednesday, August 18, 2004 4:03 PM
To: Filings@psc.state.fl.us
Cc: Susan Masterton
Subject: 031047-TP Sprint's Response in Opposition to KMC's Motion to Hold Proceedings in Abeyance

Filed on behalf of:

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Docket No. 031047-TP

Title of filing: Sprint's Response in Opposition to KMC's Motion to Hold Proceedings in Abeyance

Filed on behalf of: Sprint

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August 18, 2004

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
& Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 031047-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint-Florida, Incorporated is Sprint's Response in Opposition to KMC's Motion to Hold Proceedings in Abeyance.

Copies are being served on the parties in this docket pursuant to the attached certificate of service.

If you have any questions, please do not hesitate to call me at 850/599-1560.

Sincerely,

A handwritten signature in black ink that reads "Susan S. Masterton".

Susan S. Masterton

Enclosure

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**CERTIFICATE OF SERVICE
DOCKET NO. 031047-TP**

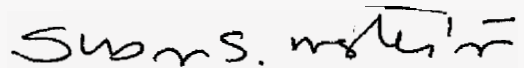
I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Electronic and U.S. mail on this 18th day of August, 2004 to the following:

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Florida Public Service Commission
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Tallahassee, FL 32399-0870

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Susan S. Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of Petition of KMC Telecom III)	Docket No. 031047-TP
LLC, KMC Telecom V, Inc., and KMC Data)	
LLC For Arbitration of an Interconnection)	
Agreement with Sprint- Florida, Incorporated)	Filed: August 18, 2004

**SPRINT-FLORIDA, INCORPORATED'S RESPONSE IN OPPOSITION TO
KMC'S MOTION TO HOLD PROCEEDINGS IN ABEYANCE**

Pursuant to Rule 28-106.204, Florida Administrative Code, Sprint-Florida, Incorporated (hereinafter "Sprint") hereby responds in opposition to KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC's (hereinafter, "KMC's") Motion to Hold Proceedings in Abeyance (hereinafter "Motion"), which was filed and served on Sprint by e-mail on August 11, 2004. Sprint objects to KMC's Motion for the reasons set forth below.

1. In its Motion KMC requests that the Commission hold this arbitration in abeyance for a period of 90 days to allow the parties to negotiate language to be incorporated into the final agreement to reflect the D.C. Circuit Court of Appeals decision in *USTA II*¹, which invalidated portions of the FCC's Triennial Review Order (TRO).² (Motion at ¶ 4). That decision took effect on June 15, 2004, well after Sprint and KMC began negotiations for a new agreement and this arbitration was initiated on November 12, 2003. Sprint disagrees that a delay in resolving the issues set forth in the initial arbitration, in order to incorporate this late arising and still uncertain issue, is necessary or beneficial.

¹ *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

² *In the Matter of Review of the Section 251 Obligations of Incumbent Local Exchange Carriers*, Docket No. CC 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 and *Deployment of Wireline Services Offering Advanced Telecommunications Services*, CC Docket No. 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, released August 21, 2003.

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2. First, the status of the TRO and USTA II is still in flux and likely will not be resolved until the end of the year or most likely even later. USTA II has been appealed to the U.S. Supreme Court and it is Sprint's understanding that the FCC has adopted, though not published, interim rules that will likely clarify the parameters of what the parties must incorporate into their agreement. In addition, the FCC has indicated that it will adopt permanent rules in response to the USTA II decision by the end of the year. Any negotiations that the parties engage in at this time will be subject to change upon further FCC or court action.
3. Second, the negotiations with KMC for a new agreement that would reflect the current status of the law and the parties' business relationship have been pending for many months, if not years. Parties initially began negotiating an updated agreement in June of 2002, subsequent to a settlement agreement entered into to resolve various issues between the parties that had been the subject of Commission complaints in Florida and other states. (By mutual agreement of the parties the start date for negotiations for the purposes of the time frames set forth in section 252 of the Act was established as June 5, 2003.) In accordance with the time frames set forth in section 252 of the Telecommunications Act, this arbitration was filed on November 12, 2003. Pursuant to those time frames, the arbitration should have been concluded by March 1, 2004. Both parties agreed to an extension of this statutory time frame to allow the parties to continue to negotiate and attempt to resolve additional issues, successfully allowing the parties to reduce the number of issues in dispute from more than 20, as set forth in KMC's initial petition, to seven issues that are still in dispute at this time.

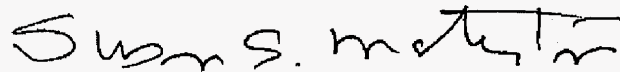
4. However, it now has been almost a year since the arbitration was initiated, delaying the implementation between the parties of several critical changes of law. These changes of law include issues that are not in dispute between the parties, but will not take effect until the arbitration is concluded and a new agreement is signed, such as the implementation of the portions of the TRO that were not challenged and are currently in effect, the implementation of the FCC's ISP Remand Order, and the implementation of the UNE rates adopted by this Commission for Sprint in January 2003.³
5. In addition, the arbitration addresses significant unresolved issues disputed by the parties, including the appropriate compensation scheme for VoIP traffic (a burgeoning telecommunications technology for which many regulatory issues have yet to be resolved) and the allocation of transport obligations and costs for ISP bound traffic.
6. Sprint believes that the appropriate course of action for the Commission and the parties is to proceed expeditiously with the hearing on and resolution of the issues currently set forth in the arbitration, thereby enabling the parties to enter into an agreement based on the Commission's decision on the disputed issues. Sprint recognizes that the impacts of USTA II and any interim or permanent rules adopted by the FCC will need to be incorporated into the parties' agreement at a point in the future when the nature of these impacts are more certain. Sprint believes that the appropriate course is for the parties to implement the impact of USTA II and subsequent revisions to the TRO through the

³ Similar issues relating to the implementation of changes in law as between Sprint and KMC are in dispute in FPSC Docket No. 040557, *In re: Notice of adoption of existing interconnection agreement between Sprint-Florida, Incorporated and MCImetro Access Transmission Services, LLC by KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC.*

change in law provisions in the agreement (which are not in dispute) and has proposed “placeholder” language to KMC along those lines.

WHEREFORE, Sprint respectfully requests the Commission to deny KMC’s Motion, to proceed expeditiously with the hearing, posthearing processes and Commission ruling on the issues in this docket, and to acknowledge that the parties will address issues associated with USTA II and FCC rules revising the TRO through implementation of the change in law provisions in the parties’ agreement.

Respectfully submitted this 18th day of August 2004.



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