

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-05-0542-CFO-TP
ISSUED: May 17, 2005

ORDER GRANTING REQUESTS FOR CONFIDENTIAL CLASSIFICATION
OF DOCUMENTS NOS. 10408-04, 03992-05, AND CROSS-REFERENCED DOCUMENTS
NOS. 02033-05 AND 03664-05

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 30, 2005, the Order Establishing Procedure, Order No. PSC-05-0125-PCO-TP, was issued. Thereafter, the scheduled was revised by Order No. PSC-05-0402-PCO-TP, issued April 18, 2005. This matter is currently set for hearing on July 12, 2005.

On April 14, 2005, Sprint filed three separate Requests for Confidential Classification. In the first one, Sprint asks for confidential classification of portions of Exhibit WLW-2, attached to the prefiled testimony of witness Wiley, which is included as a portion of Document No. 02033-05, as well as Document No. 03664-05. Subsequently, on April 22, 2005, Sprint filed a revised request regarding this Exhibit, explaining that it no longer believed certain portions of the Exhibit needed to be provided confidential classification. The revised version of the confidential WLW-2 is Document No. 03992-05. Sprint asserts that the information for which it requests confidential classification is KMC customer account information that Sprint is required to protect in accordance with Section 364.24, Florida Statutes, or is Agilent proprietary trade secret information, which Sprint contends sets forth aspects of Agilent's processes and methodology. Sprint contends that it maintains this information as confidential and that disclosure of the information would impair Sprint's ability to contract for goods and services, and thus, would harm the company's business operations. A more specific, line-by-line justification is attached to this Order as Attachment A, reflecting Sprint's revised request.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

In its second Request, Sprint asks for confidential classification of: (1) portions of Mitchell Danforth's Direct Testimony; (2) Exhibit MSD-1; (3) portions of Kenneth Farnan's Direct Testimony; (4) Exhibits KJF-1, KJF-2, and KJF-3; (5) portions of William Wiley's Direct Testimony; and (6) Exhibits WLW-3 and WLW-5, which consist of CDs. This information is also contained in Document No. 02033-05. Sprint contends that these documents also contain KMC customer account information that Sprint is required by law to protect, as well as by the parties' interconnection agreement. Sprint contends the information has not been released and that it treats the information as confidential. A more specific, line-by-line justification is attached to this Order as Attachment B.

Sprint also filed a request for confidential classification of portions of its original Complaint in this matter, as well as portions of Attachments 4, 5, and 6 to the Complaint, as contained in Document No. 10408-04. Sprint again explains that the information at issue is KMC customer account information that Sprint is required to protect, which, if released, would place Sprint in violation of its contract with KMC. Sprint contends that this information is treated as confidential and has not otherwise been released. A more specific, line-by-line justification is attached to this Order as Attachment C.

Pursuant to Section 119.01, Florida Statutes, documents submitted to this Commission are 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 Sprint 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. Disclosure of this information could be detrimental to Sprint's ability to compete, and could impair its ability to contract for goods and services. As such, Sprint's Requests for Confidential Classification of Document Nos. 10408-04, 03992-05, and cross-referenced Documents Nos. 02033-05 and 03664-05, are hereby granted to the extent set forth in the Attachments to this Order, which reflect Sprint's revised and more limited request for confidential classification of Document No. 03992-05 and Document No. 03664-05.

It is therefore

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Sprint-Florida, Incorporated's Requests for Confidential Classification of Documents Nos. 10408-04, 03992-05, and cross-referenced Documents Nos. 02033-05 and 03664-05 are hereby granted to the extent set forth in the Attachments to 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 documents 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

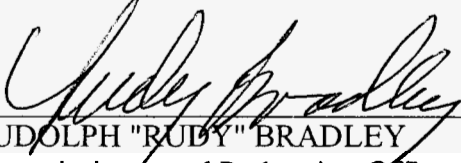
ORDERED that this Docket shall remain open.

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By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this
17th day of May, 2005



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(S E A L)

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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.

ATTACHMENT A
(Revised 4/22/05)

Document and page and line numbers	Justification for Confidential Treatment
Exhibit WLW-2, page 4, lines 4-9 and Table 1, lines 3-8, columns A-I, and line 9, columns B-I	This information is KMC customer account information that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.
Exhibit WLW-2, Page 5, highlighted information on lines 3 & 4 and highlighted portion of Chart 1.	This information is KMC customer account information that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.
Exhibit WLW-2, page 6, highlighted information on lines 6 & 7	This information is Agilent proprietary trade secret information relating to Agilent's processes and methodology that Sprint is required by contract to keep confidential and the disclosure of which would impair Sprint's ability to contract for goods and services and would harm Sprint's business operations (Section 364.183(3) and (3)(a) and (d), F.S.
Exhibit WLW-2, page 6, Table 2, lines 1-8, columns A-D	This information is Agilent proprietary trade secret information relating to Agilent's processes and methodology that Sprint is required by contract to keep confidential and the disclosure of which would impair Sprint's ability to contract for goods and services and would harm Sprint's business operations (Section 364.183(3) and (3)(a) and (d), F.S.), and KMC customer account information that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.
Exhibit WLW-2, page 6, Table 3, lines 3 & 4, column B, and highlighted information in columns D and E	This information is KMC customer account information that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.
Exhibit WLW-2, page 7,	This information is KMC customer account information that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.

<p>Table 4, lines 2-7, columns A, C and D</p>	
<p>Exhibit WLW-2, page 8, highlighted information on lines 8-11 and in footnote 1</p>	<p>This information is IXC customer account information that Sprint is required by law to keep confidential. Section 364.24, F.S.</p>
<p>Exhibit WLW-2, page 9, Table 6, line 1, columns B-E, lines 3-8, column A</p>	<p>This information is KMC and IXC customer account information that Sprint is required by law and/or contract to keep confidential. Section 364.24, F.S.</p>
<p>Exhibit WLW-2, page 10, highlighted information on lines 2 and 10, and in Figure 2, highlighted information on lines 2 and 4, line 6, 7, 9, 10 and 12</p>	<p>This information is KMC and IXC customer account information that Sprint is required by law and/or contract to keep confidential. Section 364.24, F.S.</p>
<p>Exhibit WLW-2, page 11, highlighted information on line 1 and in Figure 3, highlighted information on lines 2, 3, 4, 6, 7, 9, 10 and 12</p>	<p>This information is KMC and IXC customer account information that Sprint is required by law and/or contract to keep confidential. Section 364.24, F.S.</p>
<p>Exhibit WLW-2, page 12, highlighted information on lines 4 and 5 and in Table 7, highlighted information on lines 3-5, columns A, B,</p>	<p>This information is KMC and IXC customer account information that Sprint is required by law and/or contract to keep confidential. Section 364.24, F.S.</p>

C, D, E, F, G, and I	
Exhibit WLW-2, page 13, highlighted information on lines 8, 9, and 11, Table 8, lines 2-7, columns A-C, and Table 9, lines 3-8, columns A-F and line 9, columns B-F	This information is KMC and IXC customer account information that Sprint is required by law and/or contract to keep confidential. Section 364.24, F.S.
Exhibit WLW-2, page 14, lines 2-25	This information is Agilent proprietary trade secret information relating to Agilent's processes and methodology that Sprint is required by contract to keep confidential and the disclosure of which would impair Sprint's ability to contract for goods and services and would harm Sprint's business operations (Section 364.183(3) and (3)(a) and (d), F.S.

ATTACHMENT A

Document and page and line numbers	Justification for Confidential Treatment
Highlighted Portions of Mitchell S. Danforth's Direct Testimony, page 6, lines 12, 13, and 20-22, page 7, line 21 and page 8, line 3	This information is KMC customer account information (minutes of use and associated reciprocal compensation amounts) that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.
Exhibit MSD-1	This information is KMC customer account information (minutes of use and associated reciprocal compensation amounts) that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.
Highlighted portions of Kenneth J. Farnan's Direct Testimony, page 5, line 19	This information is KMC customer account information (intercarrier compensation Sprint alleges KMC owes Sprint) that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.
Exhibits KJF-1, KJF-2 and KJF-3	This information is KMC customer account information (minutes and percentages of use and associated intercarrier compensation amounts) that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.
Highlighted portions of William L. Wiley's Direct Testimony, page 12, lines 15 & 16	This information is KMC customer account information (numbers of local interconnection trunks in Sprint exchanges) that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.
Exhibits WLW-3 and WLW-5 (CDs)	This information (SS7 records relating to KMC's traffic terminating to Sprint over KMC's local interconnection trunks) is KMC customer account information that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.

Highlighted
portions of
James R.
Burt's Direct
Testimony,
page 19, lines
21 & 22

This information is KMC customer account information (minutes of use) that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.

ATTACHMENT A

Document and page and line numbers	Justification for Confidential Treatment
Highlighted information on page 9, of Sprint's Complaint	This information is KMC customer account information (location of exchanges where KMC has local interconnection trunks with Sprint) that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.
Highlighted information on page 10 of Sprint's Complaint	This information is KMC customer account information (location of exchanges where KMC has local interconnection trunks with Sprint and access charges Sprint alleges KMC owes Sprint) that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.
Highlighted information on page 11 of Sprint's Complaint	This information is KMC customer account information (access charges Sprint alleges KMC owes Sprint) that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.
Highlighted information on page 13 of Sprint's Complaint	This information is KMC customer account information (reciprocal compensation amounts) that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.
Highlighted information on page 15, 16, 17, and 18 of Sprint's Complaint	This information is KMC customer account information (minutes of use and associated intercarrier compensation) that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.
Highlighted information in Attachment 4 to Sprint's Complaint	This information is KMC customer account information (minutes of use and associated intercarrier compensation) that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.
Highlighted information on page 2 of Attachment 5 to Sprint's Complaint	This information is KMC customer account information (access charges Sprint billed KMC) that Sprint is required by law and contract to keep confidential. Section 364.24, F.S.
Highlighted information on	This information is KMC customer account information (access charges Sprint billed KMC) that Sprint is required by law and contract

page 1 of Attachment 6 to Sprint's Complaint	to keep confidential. Section 364.24, F.S
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