

State of Florida



Public Service Commission  
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TALLAHASSEE, FLORIDA 32399-0850

COMMISSION  
CLERK

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**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** May 4, 2006

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Office of the General Counsel (Fordham, Scott) *L. R. KS*  
Division of Competitive Markets & Enforcement (King, Pruitt) *PKW*

**RE:** Docket No. 050581-TP – Complaint of KMC Telecom III LLC and KMC Telecom V, Inc. against Sprint-Florida, Incorporated and Sprint Communications Company Limited Partnership for alleged failure to pay intrastate access charges pursuant to interconnection agreement and Sprint's tariffs, and for alleged violation of Section 364.16(3)(a), F.S. *PKW*

**AGENDA:** 05/16/06 – Regular Agenda – Stipulated Notice of Voluntary Dismissal – Participation at the discretion of the Commission.

**COMMISSIONERS ASSIGNED:** Deason, Tew, Carter

**PREHEARING OFFICER:** Deason

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\050581.RCM.DOC

Case Background

On August 30, 2005, KMC Telecom III LLC and KMC Telecom V, Inc. (KMC) filed its Complaint against Sprint-Florida, Incorporated and Sprint Communications Company Limited Partnership (collectively Sprint) for failure to pay intrastate access charges pursuant to interconnection agreement and tariffs, and for violation of Section 364.16(3)(a), Florida Statutes. On September 20, 2005, Sprint filed their Answer and Affirmative Defenses to KMC's Complaint.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Docket No. 050581-TP

Date: May 4, 2006

On January 23, 2006, Order No. PSC-06-0054-PCO-TP was issued setting forth the procedures and schedule for the conduct of this docket, including hearing dates. However, on April 21, 2006, the parties filed their Stipulation for Dismissal With Prejudice. That Stipulation notified this Commission that the parties had resolved all the issues between them which had constituted the basis of this docket and requested that we acknowledge the stipulated voluntary dismissal of the Complaint.

### Discussion of Issues

**Issue 1:** Should the Commission acknowledge the parties' Stipulation for Dismissal With Prejudice?

**Recommendation:** Yes. The Commission should acknowledge the stipulated voluntary dismissal of the Complaint. In addition, the Commission should find that the voluntary dismissal renders any and all outstanding motions moot, and that any confidential documents filed in this matter be returned to the submitting party. (Fordham)

**Staff Analysis:** The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So2d 578, 579 (Fla. 1975). It is also established civil law that once a timely voluntary dismissal is taken, the trial court loses its jurisdiction to act. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So2d 68, 69 (Fla. 1978). Therefore, staff recommends that the Commission acknowledge the parties' Stipulation for Dismissal With Prejudice and find that the voluntary dismissal renders any and all outstanding motions moot. Additionally, the Commission should find that all confidential materials filed in this Docket be returned to the filing party.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. With the withdrawal of the Complaint, there are no further matters for this Commission to adjudicate in this Docket and, therefore, it should be closed. (Fordham)

**Staff Analysis:** With the withdrawal of the Complaint, there are no further matters for this Commission to adjudicate in this Docket and, therefore, it should be closed.