

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of KMC Telecom
III, Inc. for enforcement of
interconnection agreement with
Sprint-Florida, Incorporated.

DOCKET NO. 011615-TP
ORDER NO. PSC-02-0298-PCO-TP
ISSUED: March 8, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

ORDER HOLDING RULING ON MOTION TO DISMISS IN ABEYANCE

BY THE COMMISSION:

KMC Telecom III, Inc. (KMC), is an alternative local exchange carrier (ALEC) operating in the state of Florida. Effective April 22, 1999, KMC opted into an existing Interconnection and Resale Agreement (Agreement) between Sprint-Florida, Incorporated (Sprint) and MCImetro Transmission Services, Inc. (MCImetro). The adoption of the Interconnection and Resale Agreement by KMC was approved by this Commission in Docket No. 990734-TP, Order No. PSC-99-1413-FOF-TP. The Interconnection and Resale Agreement governs the relationship between the companies regarding local interconnection and the exchange of traffic pursuant to 47 U.S.C. 251.

On November 29, 2001, KMC filed a formal complaint with this Commission alleging that Sprint had violated applicable law and the terms of the Agreement. Sprint filed its Motion to Dismiss the Complaint on December 24, 2001. On December 27, 2001, KMC filed its Motion for Extension of Time to file a response, which was granted by the Commission by Order No. PSC-02-0048-PCO-TP. KMC filed its Response to Sprint's Motion to Dismiss and a Request for Oral Argument on January 10, 2002.

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At the March 5, 2002 Agenda Conference, we granted KMC's Request for Oral Argument on Sprint's Motion to Dismiss the Complaint. After allowing both parties the opportunity to argue the merits of Sprint's Motion to Dismiss, we find that it is reasonable and appropriate to hold a ruling on Sprint's Motion to Dismiss in abeyance until the completion of a thirty (30) day period of negotiations beginning March 5, 2002. If at the conclusion of the thirty (30) day period, the parties are unable to reach a resolution of their dispute, we will revisit Sprint's Motion to Dismiss and adjudicate the Motion on its merits.

Based on the foregoing, it is,

ORDERED by the Florida Public Service Commission that a ruling on Sprint-Florida, Incorporated's Motion to Dismiss KMC Telecom III, Inc.'s Complaint for Enforcement of Interconnection Agreement will be held in abeyance until the conclusion of a thirty (30) day period of negotiations beginning March 5, 2002. It is further

ORDERED that this docket shall remain open pending resolution of Sprint-Florida, Incorporated's Motion to Dismiss KMC Telecom III, Inc.'s Complaint for Enforcement of Interconnection Agreement.

By ORDER of the Florida Public Service Commission this 8th day of March, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: _____

Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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.