

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-02-0857-FOF-TP
ISSUED: June 24, 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 ACKNOWLEDGING NOTICE OF VOLUNTARY
DISMISSAL OF COMPLAINT

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, issued July 23, 1999. 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 we granted by Order No. PSC-02-0048-PCO-TP, issued January 4, 2002. KMC filed its Response to Sprint's Motion to Dismiss and a Request for Oral

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Argument on January 10, 2002. At the March 5, 2002 Agenda Conference, we granted KMC's Request for Oral Argument and held a ruling on Sprint's Motion to Dismiss in abeyance until the completion of a thirty (30) day period of negotiations that began on March 5, 2002. At the end of the thirty (30) day period, the parties requested additional time to continue negotiations. On May 31, 2002, KMC filed a Notice of Voluntary Dismissal.

The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So. 2d 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 So.2d 68,69 (Fla. 1978). Therefore, we hereby acknowledge KMC's withdrawal of its Complaint against Sprint. The outstanding Motion to Dismiss filed by Sprint is rendered moot.

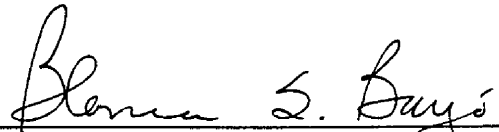
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that KMC Telecom III, Inc.'s Notice of Voluntary Dismissal of Complaint is hereby acknowledged. It is further

ORDERED that the outstanding Motion to Dismiss filed by Sprint-Florida, Incorporated is rendered moot. It is further

ORDERED that the Docket shall be closed.

By ORDER of the Florida Public Service Commission this 24th day of June, 2002.



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

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.