

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition of KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC for arbitration of interconnection agreement with Sprint-Florida, Incorporated.

DOCKET NO. 031047-TP
ORDER NO. PSC-05-0074-PCO-TP
ISSUED: January 20, 2005

ORDER DENYING MOTION FOR TEMPORARY ABEYANCE

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy and inexpensive determination of all aspects of the case.

Case Background

On November 12, 2003, KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC (KMC) filed a Petition for Arbitration of Interconnection Agreement with Sprint Communications Company Limited Partnership and Sprint-Florida, Incorporated (Sprint). On November 18, 2003, Sprint filed its Response to Petition for Arbitration. On June 1, 2004, Order No. PSC-04-0563-PCO-TP was issued, setting the matter for hearing and establishing the procedures to be followed in preparation for said hearing.

At the Prehearing held August 30, 2004, the parties announced that all issues except one had been resolved. They further agreed that the remaining issue need only be briefed and that a hearing was unnecessary. It was also determined at the Prehearing that the remaining issue (Issue No. 2) concerning traffic carried using Internet protocol (VoIP) should be redefined in greater detail so as to elucidate more specific, pertinent information upon which the Commission can rely for its decision. Accordingly, staff redrafted the issue and circulated it to the parties for their input. Upon presenting the issue to the parties, Sprint agreed, but KMC did not. After consideration of the parties' positions, I approved the final wording of the issue presented for arbitration and resolution.

On December 13, 2004, KMC filed its Motion for Temporary Abeyance of this Docket, and on December 20, 2004, Sprint filed its Response in Opposition to KMC's Motion to Hold Proceedings in Abeyance. This Order addresses KMC's Motion.

Argument

KMC's Motion

KMC states that the parties need a brief "time out" to properly address the impact of the various evolving federal proceedings involving unbundled network elements and VoIP. KMC

DOCUMENT NUMBER-DATE

00704 JAN 20 05

FPSC-COMMISSION CLERK

notes that the FCC has issued three orders in 2004 regarding VoIP issues, and its main case, including compensation and regulatory obligations, is scheduled for resolution in the FCC's IP-Enabled Services Proceeding, WC Docket No. 04-36, sometime in 2005. Therefore, KMC argues, the parties need more time to negotiate and resolve the issues in this proceeding. Additionally, according to KMC, in each of the other states where KMC and Sprint are engaged in an arbitration proceeding, Sprint has agreed with KMC to an abeyance to provide them with the time necessary to incorporate into the Agreement language reflective of the above referenced proceedings.

KMC states that some of the urgency for this arbitration has been lessened by KMC's adoption of the MCI-Sprint interconnection agreement. Therefore, at the present time KMC and Sprint are operating pursuant to a currently valid and effective interconnection agreement. Also, KMC has waived the time frames specified in 47 U.S.C. 252(b)(4)(C), and will continue to do so. Accordingly, KMC urges that its request for temporary abatement be granted.

Sprint's Response

Sprint notes that there are currently no procedural dates to abate, and KMC is likely asking that none be set until after February 21, 2005. Sprint states that it is aware there will be continuing refinements by the FCC as a result of USTA II, and has proposed to KMC "placeholder" language that would allow the parties to address such refinements through the change in law provisions of the new agreement. With respect to abatement in other states, Sprint responds that those arbitrations are in earlier procedural stages and that KMC has not explained why it seeks an approximate month longer delay in this state.

Regarding KMC's adoption of the MCI-Sprint agreement, Sprint points out that portions of that agreement are in dispute and the subject matter of another docket. Sprint advises that the agreement expires on February 28, 2005, so the granting of KMC's abeyance request would put the parties in a posture where they would not have a new agreement in place by the time that one expires. Sprint argues that this arbitration was filed with the Commission well over a year ago, and it wishes to proceed expeditiously to resolve the remaining issue.

Decision

The telecommunications industry is, perhaps, one of the most dynamic industries in our modern society. One of the few certainties in the industry is change. KMC may indeed be correct that the FCC will provide more definitive direction on the issues involved in this arbitration in the short term. This matter, however, has now been pending before the Commission for more than 14 months.

Changes in the law, as well as market forces, can be expected and often impact the provisions of approved agreements. Parties cannot always wait until applicable laws are clarified to conduct business and serve customers. Therefore, change in law provisions are routinely included in these agreements.

ORDER NO. PSC-05-0074-PCO-TP
DOCKET NO. 031047-TP
PAGE 3

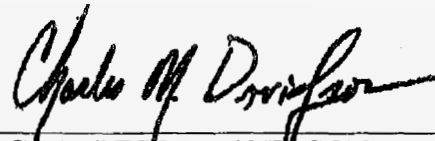
With the present agreement between these two parties expiring in less than six weeks, and the length of time this docket has been pending, this matter should be concluded. Accordingly, KMC's Motion for Temporary Abeyance is denied.

As always, the parties are encouraged to negotiate resolution of disputed issues as well as procedural disagreements. Any joint requests for abeyance by the parties to this proceeding will be duly considered. Absent such a joint request or definitive guidance from the FCC on the remaining issue, this docket shall proceed. By separate order, a schedule for conclusion of the docket will be established.

Based on the forgoing, it is

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC's Motion for Temporary Abeyance is denied.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 20th day of January, 2005.



CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

(SEAL)

LF

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.