

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-05-0126-PCO-TP
ISSUED: January 31, 2005

ORDER GRANTING SPRINT'S MOTION TO ACCEPT
LATE-FILED DISCOVERY OBJECTIONS

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.

On August 12, 2004, Sprint filed its General Objections to KMC's Second Set of Interrogatories and Second Request for Production of Documents. Accompanying those Objections was Sprint's Motion to Accept Late-Filed Discovery Objections. KMC did not file any response to Sprint's Motion.

Argument

Counsel for Sprint states that she was out of the office during the time the objections were due and inadvertently overlooked the filing deadline. Upon realizing the oversight, counsel promptly prepared and filed separately Sprint's objections and served them on the parties via electronic mail. Accordingly, the objections were filed three days late.

Sprint argues that the objections were general in nature and sufficient time remained to resolve any issues raised by the objections. Additionally, the late-filing of the objections will not delay the filing of Sprint's responses to KMC's discovery requests. Therefore, urges Sprint, no party will be prejudiced by the granting of this Motion.

DOCUMENT NUMBER-DATE

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Decision

Upon consideration, I find that the late-filing was an inadvertent oversight, creating no hardship on KMC. Therefore, the granting of Sprint's Motion would not prejudice any party. Accordingly, Sprint's Motion is granted.

Based on the foregoing, it is

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that Sprint Communications Company Limited Partnership and Sprint-Florida, Incorporated's Motion to Accept Late-Filed Discovery Objections is hereby granted

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 31st 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

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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.