

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint against KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC for alleged failure to pay intrastate access charges pursuant to its interconnection agreement and Sprint's tariffs and for alleged violation of Section 364.16(3)(a), F.S., by Sprint-Florida, Incorporated.

DOCKET NO. 041144-TP
ORDER NO. PSC-05-0633-PCO-TP
ISSUED: June 10, 2005

ORDER GRANTING SPRINT'S MOTION TO ACCEPT
LATE-FILED PREHEARING STATEMENT

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 September 24, 2004, Sprint-Florida, Incorporated (Sprint) filed its complaint against KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC (collectively KMC) for alleged failure to pay intrastate access charges pursuant to its interconnection agreement and Sprint's tariffs, and for alleged violation of Section 364.16(3)(a), F.S.

On October 15, 2004, KMC filed a motion to dismiss, and on October 21, 2004, Sprint filed its response to KMC's motion to dismiss. On December 3, 2004, Order No. PSC-04-1204-FOF-TP was issued denying KMC's motion to dismiss. On January 30, 2005, the Order Establishing Procedure, Order No. PSC-05-0125-PCO-TP, was issued. The matter is currently set for hearing on July 12, 2005, with a Prehearing date of June 20, 2005.

Prehearing Statements were due in this Docket on June 6, 2005. On June 7, 2005, Sprint filed its Prehearing Statement, along with its Motion to Accept Prehearing Statement One Day Out of Time.

Argument

Counsel for Sprint states that she has been out of town and during her absence the filing deadline was inadvertently overlooked. Upon realizing the oversight, counsel promptly electronically filed its Prehearing Statement and served it on the parties via electronic mail. Accordingly, the Prehearing Statement was filed one day late.

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Sprint represented that it had contacted counsel for KMC regarding this Motion and he has indicated that KMC does not object. Therefore, urges Sprint, no party will be prejudiced by the granting of this Motion.


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 Rudolph "Rudy" Bradley, as Prehearing Officer, that Sprint-Florida, Incorporated's Motion to Accept its Late-Filed Prehearing Statement is hereby granted.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this
10th day of June, 2005



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(S E A L)

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.