

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-05-0650-PCO-TP
ISSUED: June 16, 2005

ORDER GRANTING, IN PART, AND DENYING, IN PART, KMC'S MOTION TO COMPEL

I. 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 January 31, 2005, Order No. PSC-05-0125-PCO-TP was issued, establishing the procedures to govern the conduct of the parties in the resolution of this Docket. Thereafter, the schedule for this matter was modified by Order No. PSC-05-0402-PCO-TP, issued April 18, 2005. This matter is set for hearing July 12, 2005.

On January 20, 2005, KMC served its First Set of Interrogatories (Nos. 1-24) and First Requests for Production of Documents (Nos. 1-22) on Sprint. On February 21, 2005, Sprint filed its Responses to KMC's First Set of Interrogatories and First Requests for Production of Documents. KMC found these responses to be inadequate. Consequently, as a result of discussions between the parties, Sprint has since filed supplemental responses to these discovery requests on March 17, 2005, on March 22, 2005, on April 7, 2005, and on May 27, 2005. KMC, however, still believes that Sprint's responses are inadequate and unresponsive.

On March 1, 2005, KMC served Sprint with its Second Set of Interrogatories (25-42) and Third Requests for Production of Documents (24-28) followed by a revised version on March 7, 2005. Sprint served its responses to these requests on March 28, 2005. KMC believes that these responses are also inadequate.

Therefore, on May 19, 2005, KMC filed a Motion to Compel, alleging that Sprint's responses to KMC's First and Second Set of Interrogatories and First and Third Requests for Production of Documents were untimely, evasive, and unresponsive. In the Motion, KMC contends that while Sprint has provided three sets of supplemental responses (now four) and a "rudimentary" privilege log, the supplemental responses have not cured the defects in the initial responses. On May 26, 2005, Sprint filed its response to KMC's Motion to Compel. This Order addresses KMC's Motion to Compel.

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FPSC-COMMISSION CLERK

II. Arguments

A. KMC

1. Interrogatories 1, 7, 9, 10, 21, and 23/Production of Documents Requests Nos. 1, 4, 7, 10, 12, 16, 17, 18, 21, and 22

According to KMC, Sprint's most egregious failure to respond relates to its partial production of the Call Detail Records (CDRs) that form the basis for their claims. KMC notes that it requested in several interrogatories and production of document requests that Sprint produce the CDRs and other traffic information used as a basis for its claims against KMC, dating back at least as far as July, 2002. Specifically, KMC identifies Interrogatories 1, 6, 7, 9, 10, 21, and 23 and Production of Documents (POD) Requests 1, 4, 7, 10, 12, 16, 17, 18, 21, and 22 as requests wherein CDRs for each date covered in the Complaint should be provided in answer thereof. In addition, urges KMC, Sprint referenced its CDRs as its response in several of the other interrogatories and document requests. However, argues KMC, instead of providing all of the relevant CDRs, Sprint has provided only a small fraction of them.

KMC urges that Sprint cannot dictate the terms of its provision of relevant information as it has done, and the small sample provided is insufficient for KMC to assess, analyze and challenge Sprint's claims and assertions. KMC argues that it is entitled to all of the CDRs from the relevant period. To the extent Sprint can demonstrate that KMC's request is overly burdensome, KMC requests Sprint provide, at a minimum, one week's worth of data for each month during the relevant time period. Accordingly, KMC requests an order directing Sprint to provide full responses and produce all requested documents identified in the KMC Motion to Compel.

2. Interrogatories 6 and 7/Request for Production of Documents Nos. 6 and 7

KMC explains that Interrogatory 6 and the related POD Request No. 6 seek information regarding Sprint's assertion that KMC was altering charge party numbers in the SS7 signaling information. KMC asserts, however, that Sprint merely provided a copy of a PowerPoint presentation, entitled "KMC Correlated Call Record Tracking Fraudulent Activity," as well as a listing of internal and external e-mails in Sprint's privilege log. KMC argues that Sprint should have provided the backup data used to create the presentation, as well as the CDRs referenced in Sprint's response. Furthermore, KMC argues that Sprint has failed to explain how the information provided leads to the conclusion that KMC was altering the charge party numbers. KMC adds that Sprint's claim of privilege for the referenced e-mails is insufficient in that Sprint has not adequately identified the documents in a manner that would allow the Commission or KMC to determine if the asserted privilege does, in fact, apply.

As for Interrogatory 7 and the related POD, KMC argues that Sprint neglected to identify the "correlated call detail records" that Sprint reviewed in order to trace the traffic and identify "pseudo charge party numbers." KMC contends that Sprint needs to specifically identify which

information it reviewed that served as the basis for its claims. KMC argues that Sprint must then provide the correlated call detail records reviewed in the tracing process. KMC contends that a sampling of the records is simply not sufficient.

3. *Interrogatory 11/Request for Production of Documents No. 10*

KMC next seeks more complete responses to Interrogatory 11 and POD Request 10. Interrogatory 11 reads as follows:

Sprint alleges that it has identified intrastate interexchange traffic that originated from a Sprint-FL local exchange customer and which Sprint handed to an IXC for delivery to a Sprint-FL local exchange customer that was improperly delivered to Sprint-FL over KMC's local interconnection facilities. For each of these identified calls, please describe the call detail records and SS7 signaling information:

- (a) as generated by Sprint-FL for the originating call,
- (b) as delivered by Sprint-FL to the IXC,
- (c) where the IXC was Sprint IXC, as delivered by Sprint IXC to the next provider downstream, whether another IXC, LEC, enhanced services provider, or information services provider, and
- (d) as received by Sprint-FL from KMC for termination.

Explain in detail all changes made by Sprint-FL or Sprint IXC caused to be made by any third-party entities, in SS7 signaling information for such calls, including but not limited to calling party number and charge party number, between (a) and (b), between (b) and (c), and between (c) and (d).

POD Request No. 10 seeks the documents relied upon by Sprint in responding to the above referenced interrogatory. Though this information was requested separately, the requested answers once again involve the provision of the complete CDRs, which KMC contends Sprint has not adequately provided. Again, KMC notes that Sprint has provided allegedly statistically significant samples, but KMC maintains that the sample provided is simply too small to allow KMC to fully analyze Sprint's arguments and allegations in this case. KMC argues that it is entitled to all of the CDRs from the relevant period so that it can fully examine Sprint's claims regarding the volumes of traffic at issue, as well as the jurisdictional nature of the traffic. Without this information, KMC contends it is impaired in its ability to defend itself against Sprint's allegations.

4. *Interrogatory 15*

This interrogatory asks Sprint to provide the calculation for the amount it claims KMC owes for improperly billed intrastate interexchange traffic. KMC contends that Sprint did not provide the calculations, but instead provided only a statement about some of the steps it took in order to determine the amount. KMC emphasizes that Sprint did not reference the prices it applied in calculating the amount, nor how many CDRs it used to estimate the traffic. Thus, KMC seeks a more specific response to this query. I note that counsel for KMC has informed staff counsel that Sprint did provide the SS7 CDR Summary Reports in its latest supplemental response to the discovery, which KMC acknowledges satisfies, at least in part, Interrogatory 15.

5. *Interrogatory 16/Request for Production of Documents No. 12*

Similarly, this requests seeks the calculation of the amount Sprint claims KMC owes for reciprocal compensation for ISP-bound traffic improperly billed and routed to Sprint. Again, KMC contends that Sprint did not provide the calculations, but merely provides a statement of the steps it took to arrive at the amount. Thus, KMC seeks a more specific response, including the CDRs relied upon in making the calculation.

6. *Request for Production of Documents No. 16*

KMC notes that Sprint objected to its request for internal records related to Sprint's production of information contained in Sprint_CDR_Translations. KMC argues, however, that this request is not overbroad, ambiguous, or vague, as Sprint contends. Rather, KMC asserts that this request seeks all internal and external correspondence, e-mails and other documentation pertaining to Sprint's creation and compilation of CDR spreadsheets referenced in its Complaint. KMC contends that since this information was the basis for Sprint's investigation of KMC, then Sprint should already have this information compiled for use at hearing. Thus, KMC argues that it would not unduly burden Sprint to provide the information.

7. *Requests for Production of Documents 17 and 18*

POD Requests Nos. 17 and 18 were included in the grouping for which complete CDRs was requested. However, these requests also concern the Agilent Technologies Study referenced in the Complaint. Request 17 requests:

- (a) Please provide copies of the Sprint analysis conducted using the Agilent system referred to in paragraph 13 of the Complaint regarding traffic terminated to Sprint over the local interconnection trunks between Sprint and KMC in Sprint's Ft. Myers and Tallahassee exchanges.
- (b) Provide copies of all work papers and supporting documentation associated with the analysis described in (a).

(c) Please provide copies, in CD format, of all “extracted call detail usage records” used in the analysis described in (a).

(d) Provide copies of all memoranda, correspondence, e-mail and other documents regarding or relating to the analysis described in (a).

POD Request 18 requests:

(a) Please provide copies of the Agilent Technologies Study referred to in paragraph 14 of the Complaint regarding traffic terminated to Sprint over the local interconnection trunks between Sprint and KMC in Sprint’s Ft. Myers and Tallahassee exchanges.

(b) Provide copies of all work papers and supporting documentation associated with the analysis described in (a).

(c) Please provide copies, in CD format, of all “extracted call detail usage records” used in the analysis described in (a).

(d) Provide copies of all memoranda, correspondence, e-mail and other documents regarding or relating to the study described in (a), and its preparation, including but not limited to all documents provided by Sprint to Agilent technologies to assist the latter in its preparation of its independent study.

(e) Provide copies of all documents regarding or related to Sprint’s retention of Agilent Technologies to perform the study described in (a).

KMC states that Sprint responded to POD Request 17 and 18 by (i) objecting to POD Request 18 on the grounds of privilege, (ii) referring to CDRs that it had provided in response to other requests, and (iii) providing the final Agilent Study Report, a Statement of Work, and a Master Agreement between Sprint and Agilent.

8. Interrogatory 36/Request for Production of Documents No. 25

Interrogatory 36 states:

(a) Has Sprint-FL made any claims, demands, inquiries, or otherwise inquired into or objected either to a dramatic or significant change in the traffic of any LEC other than KMC or to the delivery of traffic to Sprint-FL over local interconnection trunks that Sprint-FL believes should be subject to access charges in the Tallahassee, Florida or Ft. Myers, Florida markets? This interrogatory includes all claims, demands, inquiries, and objections whether formal or informal and whether written or verbal.

(b) If the answer to (a) is yes, please describe in detail each claim, demand, inquiry or objection, including, (i) the LEC to whom the claim, demand, inquiry

or objection was made, (ii) when the claim, demand, inquiry, or objection was made, (iii) the basis for the claim, demand, inquiry or objection, (iv) the LEC's response to the claim, demand, inquiry, or objection, and (v) the final resolution, outcome, or current status of the issue.

(c) If the answer to (a) is yes, please identify and describe all notes, memoranda, spreadsheets, communications, emails, correspondence, or documentation related to such claim, demand, inquiry or objection.

Request 25 simply asks for all supporting documents identified in response to Interrogatories 25-31 and 32-40.

KMC states that Sprint responded to this request by identifying one CLEC and no documents in support thereof. KMC urges that, based on emails and other documents provided in discovery, it believes this answer to be incomplete. KMC believes that multiple LECs have been the object of demands and inquiries with respect to access charges that are not identified in Sprint's response. Thus, KMC asks that Sprint be required to provide full responses and name all responsive LECs, as well as provide all requested documents.

B. Sprint's Response

Sprint argues that it has consistently endeavored to timely and fully respond to each of KMC's interrogatories and production of document requests, to the extent the requests sought relevant information not subject to proper objections under the applicable discovery rules. Sprint notes that KMC's requests were at times ambiguous and were frequently duplicative and overlapping with other discovery requests. Sprint believes a large part of the problem is the voluminous and technical nature of the documents that KMC has requested and that Sprint has provided.

Sprint does not believe it has an obligation to assist KMC in its evaluation of these documents in the manner that KMC appears to contemplate in its Motion to Compel. Sprint argues that KMC chose to frame its discovery questions broadly and, to the extent KMC has additional questions regarding what Sprint has provided, these questions are appropriately addressed through additional discovery and/or depositions.

Sprint believes the great conflict over these discovery matters all center around the CDRs. Sprint explains that it collects approximately 120 million call detail records for multiple customers each day. Those records are stored on one to two tapes for each day of records. Therefore, the records for the two plus years for the traffic that is the subject of Sprint's complaint would require more than 800 tapes to be pulled and reviewed to identify KMC records. Sprint claims that process takes one to two days for each day of records. Accordingly, that process would take significant time and costs, specifically, a minimum of \$362,000 dollars and at least 18 months.

In lieu thereof, Sprint claims it has provided:

CDR Records for September 10, 2003 (which were provided to KMC prior to the initiation of the Complaint as part of Sprint's attempt to work with KMC to resolve the Complaint)

All CDR records underlying the Agilent study (See CD Labeled "Agilent CDR Records" provided in response to KMC POD No. 18 (c), also provided as Exhibit WLW-3 to William L. Wiley's Direct Testimony)

A statistically valid, 27 day random sample of CDR records spanning the two year period (See CDs provided on February 21, March 17 and April 7, 2005, and labeled KMC CDR Records, 20031024-20030711 GMT KMM CLEC CDRs, 20040202-20031118 EST KMM CLEC CDRs, and KMC CLEC 20030606-20021124, respectively, also provided as Exhibit WLW-5 and Revised Exhibit WLW-5, to William L. Wiley's Direct and Rebuttal Testimonies),

Sprint argues that producing those records has exceeded what this Commission has determined was necessary to comply with the rules in a previous decision. See, *In re: Dade County Circuit Court referral of certain issues in Case No. 92-11654 (Transcall America, Inc. d/b/a ATC Long Distance vs. Telecommunications Services, Inc. and Telecommunications Services, Inc. vs. Transcall America, Inc. d/b/a ATC Long Distance)* that are within the Commission's Jurisdiction, Docket No. 951232, Order No. PSC-98-0954-PCO-T1, issued July 15, 1998 and Order No. PSC-98-1058-PCO-TI, issued August 7, 1998. In that case, Sprint notes, this Commission recognized that call detail records in their raw form contain records relating to numerous customers that are confidential and that Sprint is prohibiting from making public under s. 364.24, Florida Statutes and also that the other customers' records are not relevant to a dispute involving a single customer. It was further determined that CDR information pertaining to a single customer do not exist as separate records, but must be created in order to be produced and that such preparation is beyond the scope of what is required under the applicable discovery rules.

Sprint argues that this is the same scenario – the CDRs at issue here also contain confidential information for multiple customers, and Sprint would be required to “prepare” the records, which would be a lengthy and costly process, as explained earlier. Therefore, Sprint urges, to require it to prepare and produce any additional CDR records goes beyond the scope of the discovery rules, as this Commission has previously found.

Sprint further argues that the records it provided in POD No. 1 would be responsive to most of the other requests at issue here. Sprint again notes that KMC's requests are duplicative and overlap. Still, Sprint claims, it provided in response to POD No. 6 the following:

1. Power point presentation relating to Correlated Call Records (CCR).
2. CD named "CCR041905" which contains the correlated call records underlying the power point presentation. (these records initially were provided as part of

Response to Interrogatory No. 92, which was provided in response to KMC's "catch all" POD No. 15 asking for "any records that had not otherwise been provided in other discovery responses" and were provided again on CD in Sprint's Supplemental Response to POD No. 15 filed on March 22, 2005)

3. Multiple confidential but nonprivileged e-mails and attachments to those e-mails; provided on March 17

4. Privilege log, detailing each e-mail string, the subject of the e-mails, each individual including in the e-mail distribution and the name of the Sprint attorney(s) initiating or requesting the communication, provided in Sprint's Supplemental Response to POD Nos. 6,7, 15,17 and 18, filed on March 22, 2005.

Sprint states that, because KMC's requests were so similar and intertwined, it was difficult to separate its responses strictly according to which interrogatory they were responsive to. However, Sprint claims it provided more than a log of privileged emails that would otherwise be responsive. Rather, it provided voluminous non-privileged, though confidential, emails and related attachments that were responsive to POD No. 6 and related POD requests. In essence, Sprint claims that in each of the questioned interrogatories and PODs it has provided more than a threshold amount of data and documents in response. Again, Sprint argues, the CDRs are central to virtually every challenged item, and Sprint has provided more of those records than it believes it is required to provide.

As for Interrogatory No. 7 and Production Request No. 7, Sprint contends it provided a narrative response, as well as:

1. Power Point presentation labeled IXC study
2. Correlated call records labeled CCR041905
3. Unprivileged confidential e-mails
4. Privilege log

Sprint contends that its response constitutes the entire body of documents responsive to the request; thus, the Motion should be denied.

With regard to Interrogatory 11 and POD Request NO. 10, Sprint alleges it specifically described the process it used to review the pertinent records. Sprint argues that this should be sufficient since the process for reviewing each call record is the same. Again, Sprint contends that KMC's Motion is based largely on KMC's lack of understanding of the records themselves. Thus, Sprint notes it will supplement its response to explain, step-by-step, what information is provided on the call record at each stage of transmission. Beyond this, Sprint contends there are no other records responsive to the request.

Likewise, Sprint contends that it has provided what should be a sufficient explanation of the calculation sought by Interrogatory 15. To describe each calculation on a call-by-call basis would be unduly burdensome and unnecessary, according to Sprint.

As for Interrogatory 16 and POD Request No. 12, Sprint notes that the same calculation provided in response to this query is also responsive to the discovery regarding avoided access charges. As such, Sprint contends these requests are duplicative. Sprint notes that it has, nevertheless, provided an Excel spreadsheet detailing the pertinent billing calculations, as well as internal e-mails relating to Sprint's calculation of the overpayment of reciprocal compensation. As such, Sprint believes it has been responsive to KMC's request.

With regard to POD Request No. 16, Sprint notes that it believes that KMC misinterpreted its objection, and explains that any privileged documents it believes are responsive to KMC's discovery requests are listed on the privilege log it has provided. Otherwise, Sprint believes it has fully responded to this request by providing the pertinent call detail records in response to POD Request No. 1.

POD Request Nos. 17 and 18 relate to the Agilent Study Sprint referenced in its Complaint. Therefore, Sprint reports that it provided in response the following documents:

1. A copy of a brochure entitled "Agilent OSS Revenue Assurance"
2. A copy of a brochure entitled "Agilent acceSS7 Business Intelligence"
3. Agilent Access Bypass Study Results (also provided prefiled Exhibit WLW-3) (portions confidential)
4. Sprint/Agilent Master Agreement (Confidential)
5. Agilent SOW for the KMC Study (Confidential)
6. KMC Agilent CDRs (on confidential CD only)
7. Confidential but nonprivileged e-mails discussing the Agilent study and its results
8. E-mails identified on Sprint's privilege log

Sprint believes that to be a more than adequate response to PODs 17 and 18.

Sprint also claims it made an adequate response to Interrogatory No. 36 and the related POD Request No. 25. This interrogatory inquires whether Sprint has made any claims related to the delivery of access traffic over local interconnection trunks against any other LEC for traffic in the Ft. Myers or Tallahassee LATAs. Sprint states it provided the name of a CLEC and an explanation of the basis of that claim. Regarding the related POD No 25, Sprint claims that it did not fail to identify the requested documents but, rather, responded that it had documents, but due to their highly confidential and competitive nature, Sprint would make them available for

viewing at Sprint's Tallahassee offices. According to Sprint, KMC has never contacted Sprint to arrange a time to view those documents.

Sprint notes that in response to POD Request 15, which seeks all relevant documents not otherwise provided, it provided numerous supporting documents, including correlated call detail records, that appear to be responsive to KMC's request for additional information in its Motion to Compel.

In conclusion, Sprint claims it has provided detailed responses to each of KMC's discovery responses and provided the voluminous relevant documentation that is responsive to KMC's POD requests. Sprint states it has fully complied with the applicable discovery rules, and pursuant to these rules and consistent with this Commission's precedent is not required to prepare and produce all of the millions of call detail records that span the two years of Sprint's complaint and it would be unduly burdensome and expensive for Sprint to do so.

Sprint further states that to the extent KMC's Motion to Compel indicates a lack of understanding of what Sprint has provided, Sprint has either made clarifications in this response to assist KMC in understanding the information provided or Sprint is filing supplemental responses in an attempt to alleviate this lack of understanding as noted herein. Therefore, Sprint argues, KMC's Motion to Compel should be denied.

III. Findings and Conclusion

The scope of discovery under the Florida Rules of Civil Procedure is liberal. Rule 1.280(b)(1), FRCP, states that:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of the other party. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. What is relevant for purposes of discovery is a broader matter than what is relevant and admissible at hearing. Discovery may be permitted on information that would be inadmissible at trial, if it would likely lead to the discovery of relevant, admissible evidence. See Allstate Insurance Co. v. Langston, 655 So.2d 91 (Fla. 1995). Furthermore, objections to discovery that is "burdensome" or "overly broad" must be quantified. First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Ass'n, Inc., 545 So.2d 502, 503 (Fla. 4th DCA 1989). Finally, assertions that information sought is subject to privilege as a "trade secret" must be set forth in such a way that parties can assess the applicability of the alleged privilege. TIG Ins. Corp. of America v. Johnson, 799 So.2d 339 (Fla. 4th DCA 2001).

This standard is not, however, without limit, as this Commission has recognized time and again. See Orders Nos. PSC-03-0857-PCO-TP; PSC-03-1304-PCO-TL; and PSC-05-0096-PCO-TP. In accordance with Rules 1.280 and 1.350, Florida Rules of Civil Procedure, the scope of discovery does not include the discovery of irrelevant information. See Travelers Indemnity Company v. Salido, 354 So. 2d 963(Fla. 3rd DCA 1978). Furthermore, Rule 1.350, Florida Rules of Civil Procedure, requires that the party from whom production is sought must have possession, custody or control of the documents. See also Henry P. Trawick, Florida Practice and Procedure, § 16-10, (1991). It is not proper to seek production of documents that do not exist and would, therefore, require preparation. See Bissell Bros. v. Fares, 611 So. 2d 620(Fla. 2nd DCA 1993)(discovery of nonexistent records cannot be had); Balzebre v. Anderson, 294 So. 2d 701(Fla. 3rd DCA 1974) (“ . . . a party may not be required to produce documents which it does not have. . .”); and Henry P. Trawick, Florida Practice and Procedure, § 16-10, (1991).

In reviewing the information and documents Sprint has provided in response to Interrogatories 1, 7, 9, 10, 11, 21 and 23, as well as POD Requests 1, 4, 7, 10, 12, 16, 17, 18, 21, and 22, it appears that Sprint has met its burden on each of the challenged items in KMC’s Motion. The CDRs for each day spanned by the Complaint seem to be central to essentially each of the challenged items. However, I find that preparation and production of those CDRs would be too costly, time consuming, and burdensome to require them in this instance. Furthermore, the rationale employed in Order No. PSC-98-1058-PCO-TI is applicable in this case as well. The raw CDRs contain information that Sprint claims is beyond the scope of discovery in this case and which is also protected by Section 364.24, Florida Statutes. Sprint is likewise not required to extract KMC data, thus creating a new document, in order to respond. Thus, the CDR records and sampling that Sprint has provided KMC thus far appear to satisfy KMC’s discovery requests to the extent required.

As for Interrogatories 15 and 16, and POD Request 12, I am persuaded that Sprint has provided a sufficient response in that it has explained its methodology for calculating the amounts it believes are owed. Sprint need not retrace each mathematical equation on a call-by-call basis. The steps outlined in Sprint’s response should adequately provide KMC with information in order to review Sprint’s calculations and determine whether it believes the calculations are appropriate.

As for POD Request 16, Sprint has apparently responded in spite of its general objections as to the scope and clarity of the request. Thus, it does not appear that there is any information that has not been provided or otherwise identified in the privilege log. If KMC is able to more specifically identify what it believes has not been provided in response to this request, it may renew its request with regard to this particular POD Request.

With regard to POD Requests 17 and 18, it is unclear what KMC believes has still not been provided. It appears that the list of information Sprint asserts it provided in response to these requests should be sufficiently responsive. However, to the extent that KMC is able to more specifically identify more specifically how it believes the responses provided are deficient, it may renew its Motion as it pertains to these requests.

With regard to Interrogatory 36 and POD Request 25, Sprint has answered, but it is unclear whether it has fully responded. I note that Sprint did not indicate whether the CLEC it identified was the only other CLEC against whom Sprint had made similar claims regarding delivery of traffic. Thus, to the extent that Sprint has made similar such allegations against any other LEC or CLEC, it shall be required to identify the company. However, I note that while the scope of discovery is very broad, this inquiry into allegations against other LECs and CLECs closely approaches the boundary of relevance attached to the specific issues to be addressed in this Docket. Furthermore, the customer-specific and competitive nature of the supporting information sought in relation to claims against another CLEC causes me heightened concern. As such, Sprint's offer to make the supporting information available only at Sprint's offices in Tallahassee is a reasonable restriction on the dissemination of the information. Therefore, Sprint shall be required to identify any and all other LECs or CLECs against whom it has made similar allegations regarding delivery of traffic in Florida. Sprint shall also be required to make available for review any documents identified or relied upon in providing its response, but may do so at its Tallahassee offices. I emphasize that KMC must be given a full and fair opportunity to review the documents prior to the hearing in this matter. If Sprint has made no similar allegations against other CLECs or LECs regarding delivery of traffic in Florida, it must specifically make that representation in its response.

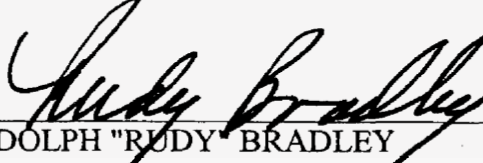
Accordingly, KMC's Motion to Compel is hereby granted, in part, and denied, in part, as set forth in the body of this Order. To the extent that Sprint is required to provide additional information to KMC in response to Request for Production of Documents No. 25 and Interrogatory 36, it shall do so within 7 calendar days of the issuance of this Order.

Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC's Motion to Compel is hereby granted, in part, and denied, in part, as set forth in the body of this Order. It is further

ORDERED that to the extent that Sprint has been required to provide additional information to KMC in response to Request for Production of Documents No. 25 and Interrogatory 36, it shall do so within 7 calendar days of the issuance of this Order.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this
16th day of June, 2005



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(S E A L)

BK

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.