

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-05-0652-CFO-TP
ISSUED: June 16, 2005

ORDER DENYING REQUEST FOR CONFIDENTIAL CLASSIFICATION
OF DOCUMENT NO. 04554-05

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 19, 2005, the parties met to identify issues to be resolved in this proceeding. On January 30, 2005, the Order Establishing Procedure, Order No. PSC-05-0125-PCO-TP, was issued. Thereafter, the scheduled was revised by Order No. PSC-05-0402-PCO-TP, issued April 18, 2005. This matter is currently set for hearing on July 12, 2005.

On May 10, 2005, KMC filed its Rebuttal Testimony of Marva Brown Johnson, including an attachment identified as Confidential Exhibit _____ (MBJ-9). Filed simultaneously with that testimony was KMC's Claim for Confidential Treatment of Exhibit MBJ-9, in accordance with Rule 25.22-006(5), Florida Administrative Code, and Section 364.183(1), Florida Statutes. Thereafter, on May 24, 2005, KMC filed its Request for Confidential Treatment of DN 04554-05, Exhibit MBJ-9 to the Rebuttal Testimony of Marva Brown Johnson. On June 3, 2005, Sprint filed its objection to KMC's Request for Confidential Treatment of DN 04555-05 (sic).

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Argument

KMC argues that the information for which confidential treatment is requested reveals the identity of KMC's Customer X, an enhanced service provider supporting Voice over Internet Protocol services, which is the party KMC asserts is responsible for the traffic that is at issue in this docket. KMC urges that the identity of "Customer" is confidential and protected from disclosure under Section 119.07(r), Florida Statutes, which states:

All records supplied by a telecommunications company, as defined by s. 364.02, to a state or local governmental agency which contain the name, address, telephone number or subscribers are confidential and exempt from the provisions of subsection (1) and s.24(a), Art. I of the State Constitution.

KMC claims the information for which confidential treatment is requested in Exh. MBJ-9 consists of letters from Customer X in various FCC proceedings, which demonstrate and substantiate Customer X as an enhanced services provider that is permitted to purchase local loops from KMC and not toll facilities subject to access charges. KMC requests that each of the letters be held confidential in their entirety, notwithstanding the fact that these documents are public records at the FCC. According to KMC, the mere act of redacting the Customer X name, address and such identifying information would not maintain the confidential identify of Customer X, as anyone could then go to the FCC public record and easily locate the letters by docket, date, or other contents information, thereby identifying Customer X. Therefore, urges KMC, the correspondence reveals the identity of Customer X, and should be protected by Section 119.07(r), Florida Statutes. Accordingly, argues KMC, this Commission should find that the information contained in Exh. MBJ-9 is confidential and exempt from section 119.071 (1), pursuant to section 364.183(3)(a), F.S.

Sprint argues that the request for confidentiality should be denied because KMC admits that these documents are public documents on file with the FCC. Section 119.07(f), F.S., exempts from the public records law records provided by a telecommunications company that contain the name, address and telephone number of subscribers. While 119.07(r), F.S., protects only the name, address and telephone number of a telecommunications company's subscriber, Sprint notes that Section 364.183, F.S., sets forth a telecommunications company's authority to claim, and this Commission's authority to grant, confidential classification to information filed with the Commission. Rule 28-22.006, F.A.C., is the Commission rule implementing the statutory provision. The term "proprietary confidential business information" is defined in subsection (3) of Section 384.183, F.S., to mean:

information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operation, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.(emphasis added)

Sprint urges that the information that is the subject of the KMC request clearly does not meet the definition of “proprietary confidential business information” in the statute. Rather, the FCC comments are public documents, which Sprint or any person can obtain via the FCC’s website and which, as a party to the FCC docket in which the comments were filed, likely have already been served on Sprint as public documents in the context of the FCC proceeding. Therefore, argues Sprint, because the documents for which KMC requests confidential classification are public documents and because they can be and have been obtained by Sprint as public documents via other means than by service of those documents on Sprint subject to the protective agreement between the parties in this docket, it is clearly inappropriate for the Commission to grant confidential classification to the documents as KMC has requested.

Decision

Pursuant to Section 119.01, Florida Statutes, documents submitted to this Commission are public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the “sunshine.” The Public Records Law is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. Seminole County v. Wood, 512 So. 2d 1000 (Fla. 5th DCA 1987), *rev. denied* 520 So. 2d 586 (Fla. 1986). The determination of whether information is proprietary confidential business information is a matter of discretion. Florida Society of Newspaper Editors, Inc. v. Florida Public Service Commission, 543 So. 2d 1262, 1265 (1st DCA 1989) *rehearing den.* June 12, 1989. When determining whether information should be deemed confidential, the public interest in disclosing the information must be weighed against the potential harm to the entity if the information were disclosed.

The only exceptions to the presumption that documents should be accessible to the public are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. Rule 25-22.006(4)(c), Florida Administrative Code, provides that the Company must either demonstrate that the documents fall within one of the statutory examples of “proprietary confidential business information” as defined by Section 364.183(3), Florida Statutes, or, if none of the examples are applicable, show that disclosure of the information will harm the Company’s ratepayers or its business operations.


In the present matter, however, the information at issue does not qualify as “proprietary confidential business information” as defined by Section 364.183(3), Florida Statutes, because it is already in the public domain through the FCC filings. Because the information has already been disclosed in the public domain, it does not qualify for protection, nor is it capable of being protected, by an Order granting confidentiality. This Commission does not have the power to “unring a bell.”

It is therefore

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC's Request for Confidential Classification of Document No. 04554-05, Exhibit MBJ-9, is hereby denied. It is further

ORDERED that in accordance with Rule 25-22.006(10), Florida Administrative Code, any material denied confidential classification by this Order shall be kept confidential until the time for filing an appeal has expired.

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



RUDOLPH "RUDY" BRADLEY
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.