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-05-0779-FOF-TP ISSUED: July 26, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

I. Case Background

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.

By Order No. PSC-05-0650-PCO-TP, issued June 16, 2005, KMC's Motion was granted, in part, and denied, in part. Specifically pertinent for this Order, the Prehearing Officer declined to require Sprint to produce call detail records (CDRs) for all calls during the period in question. The Prehearing Officer determined 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." Order at p. 11. Thereafter, on June 27, 2005, KMC filed a Motion to Reconsider the Prehearing Officer's decision, and on July 7, 2005, KMC filed an updated version of its Motion. Sprint's response in opposition was filed July 5, 2005.

At the start of our July 12, 2005, hearing in this case, we addressed the Motion for Reconsideration. This Order reflects our decision.

II. Oral Argument

KMC requested oral argument on its Motion. However, finding that the arguments were fully set forth in the pleadings, we declined to receive oral argument.

III. Motion for Reconsideration

KMC believes Sprint should be required to provide all the call detail records regarding its claim for intrastate access charges. KMC contends that the Prehearing Officer's decision that the summaries provided by Sprint are sufficient essentially prejudges the case in Sprint's favor, forcing the Commission to accept as true Sprint's calculation of the amount owed. Furthermore, KMC argues that information has come to light in recent depositions that highlights the importance of the call detail records, making it imperative that Sprint turn all of the information over to KMC. KMC contends that without all of the pertinent call detail records (CDRs), it cannot verify the extent of the exchange of access traffic alleged by Sprint, nor can it verify the calculation of the amount Sprint claims it is owed.

KMC argues that, at the deposition of Sprint witness Aggarwal, Ms. Aggarwal stated that Sprint relied on the CDRs to establish its claim for amounts owed by KMC, and that the Summary Reports provided by Sprint were not the full extent of the information relied upon by Sprint. KMC emphasizes that Ms. Aggarwal explained that Sprint looked at all of the SS7 CDRs available to Sprint as the first step in calculating the amount owed. Ms. Aggarwal noted that it would not be sufficient to look at just one day in each month to verify the calculations, which is the amount of information in the Summary Reports. Thus, KMC argues that the Commission should reconsider Order No. PSC-05-0650-PCO-TP, and require Sprint to provide responses to Interrogatories 1, 7, 10, and 11, as well as responses to Production of Documents Requests 1, 7, and 10. At a minimum, KMC contends that Sprint should provide the CDRs upon which Sprint's claim for damages is based for 3 complete months. Specifically, Sprint should provide CDRs for one month of 2002, one from 2003, and one from 2004 (prior to June).

In response, Sprint argues that KMC is simply rehashing its earlier arguments under the guise of "new evidence" arising from Ms. Aggarwal's deposition. At the time of its filing of its

response, Sprint had not yet received Ms. Aggarwal's deposition transcript. Sprint emphasizes, however, that KMC has not identified with specificity the testimony of Ms. Aggarwal that it believes support its claims. Nevertheless, Sprint argues, KMC has failed to demonstrate that the prehearing officer erred in his decision that the extent of the information requested was unduly burdensome. Sprint emphasizes that in order to produce the information KMC seeks, it would have to sift through "billions of call detail records for all of the carriers that terminate traffic to Sprint to extract the millions of the call detail records that related to KMC traffic only over the relevant 800 day period." Response at p. 3. Furthermore, Sprint argues that KMC has not identified an error in the prehearing officer's decision that the raw CDR information contains highly sensitive, confidential information about other Sprint customers, which is both beyond the scope of this case and protected by Section 364.24, Florida, a decision that Sprint further emphasizes is consistent with Commission precedent in Docket No. 951232-TP. Sprint contends that, regardless of the alleged new evidence, the prehearing officer's decision is accurate, consistent with Commission precedent, and should continue to stand.

In addition, Sprint argues that KMC has misinterpreted how Sprint used the CDRs at issue. Sprint explains that it did not, itself, review each and every CDR. Instead, Sprint reviewed only certain records involving KMC traffic, which it contends it has provided to KMC via its responses to Interrogatories 1, 6, 7, and 9. Sprint further explains that it commissioned Agilent Technologies to review Sprint's findings based upon a week of CDRs. Those CDRs have also been provided, according to Sprint. Sprint maintains that it also went beyond the discovery requirements and provided 27 days of CDR records representing one day from each of the 27 months at issue. According to Sprint, these CDRs represent a random sample that is statistically valid. Sprint believes that KMC is confused about Sprint's use of the monthly summary SS7 reports as opposed to the use of the CDRs. Sprint explains that the SS7 summary reports are produced by the Agilent system and represent data extracted from CDRs. These are the reports that Sprint claims it used to develop the PLU/PIU factors applied to KMC's past bills to determine the additional amount owed. Sprint again emphasizes that it did not review every CDR to calculate the amount.

Referencing Ms. Aggarwal's deposition transcript, Sprint adds that its witness did not introduce any new evidence; rather, Ms. Aggarwal clearly stated that Sprint reviewed all the relevant SS7 CDRs *through the Agilent system*. (emphasis added). Sprint adds that any further assertions based on Ms. Aggarwal's deposition testimony, particularly arguments regarding the relationship of the Agilent CDR MOUs to the billing MOUs, do not go to the question of reconsideration of the prehearing officer's ruling on a discovery dispute. Instead, Sprint argues, these questions go more directly to the question of the sufficiency of the evidence upon which Sprint has based its case. These arguments, according to Sprint, are more appropriately considered and addressed after the hearing has concluded.

IV. Decision

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974);

Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 162 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex.rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc., 294 So. 2d at 317.

In this instance, KMC has not identified a mistake of fact or law in the prehearing officer's decision. The information provided by Sprint appears to be responsive to the discovery requests. Furthermore, the decision is entirely consistent with past Commission precedent set in Docket No. 951232-TP, wherein we concluded that the production of raw CDRs would require a company to divulge proprietary confidential information pertaining to individual customers. Requiring the company to delete, extract, or otherwise redact that information would constitute the creation of entirely new documents, which exceeds the scope of discovery requirements. In this case, imposing such a requirement would also be excessively burdensome due to the time period at issue. In addition, the prehearing officer's ruling does not constitute prejudgement of this case. It does not in any way require this Commission to accept, without verification, any part of the testimony as true. Sprint must still substantiate its complaint in order to prevail.

For all these reasons, the Motion for Reconsideration is denied.

It is therefore

ORDERED by the Florida Public Service Commission that KMC's Motion for Reconsideration of Order No. PSC-05-0650-PCO-TP is denied.

By ORDER of the Florida Public Service Commission this 26th day of July, 2005.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Hong Wang
Hong Wang, Supervisor
Case Management Review Section

(SEAL)

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NOTICE OF 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.

Any party adversely affected by the Commission's final action in this matter may request 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 by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.