

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-05-0810-CFO-TP  
ISSUED: August 5, 2005

ORDER GRANTING, IN PART, AND DENYING, IN PART, REQUEST FOR  
CONFIDENTIAL CLASSIFICATION  
OF DOCUMENT NO. 07053-05 (CROSS-REFERENCED DOCUMENT NO. 02023-05)

**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. The hearing in this matter was conducted on July 12, 2005.

On February 28, 2005, KMC filed its Direct Testimony of Marva Brown Johnson, including an attachment identified as Confidential Exhibit MBJ-3 (Hearing Exhibit 57). 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 July 22, 2005, KMC filed its Request for Confidential Treatment of DN 07053-05 (cross-referenced Document No. 02023-05), Exhibit MBJ-3 to the Direct Testimony of Marva Brown Johnson (Hearing Exhibit 57), and page 8, lines 6 – 8 of Witness Johnson's Direct Testimony.

DOCUMENT NUMBER-DATE

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KMC argues that the information on page 8, lines 6 - 8 of the Direct Testimony reveals the access charges that Sprint back-billed KMC by market, which consequently reveals KMC's market share in those areas. KMC contends that this information is considered trade secret and proprietary, confidential business information, the disclosure of which would impair KMC by giving its competitors unfair advantage in those markets. As for the information in MJB-3 (Hearing Exhibit 57), KMC argues that this information consists of amounts billed for services rendered to KMC's customer on a service-by-service basis. KMC contends that this information constitutes customer proprietary network information (CPNI), which is confidential pursuant to both federal and Florida law. KMC contends that it treats this information as confidential.

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. 5<sup>th</sup> 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 (1<sup>st</sup> 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 page 8, lines 6 - 8 of Witness Johnson's Direct Testimony 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 KMC's own filings. On February 28, 2005, KMC filed the confidential and public versions of Witness Johnson's Direct Testimony, in accordance with Rule 25-22.006, Florida Administrative Code. However, the public version of the testimony, Document No. 02021-05, contained the full text of page 8, lines 6 - 8. As such, it entered the public domain upon filing. 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. As I've noted before, this Commission does not have the power to "unring a bell." Therefore, KMC's request as it relates to page 8, lines 6 - 8 of the Direct Testimony of Marva Brown Johnson is denied.

As for Exhibit MJB-3 (Hearing Exhibit 57), this document shall be granted confidential status. The information therein appears to be customer specific billing information that is protected by Section 364.24, Florida Statutes, and as such, meets the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes. This information has not otherwise been disclosed. As such, confidentiality is granted to Exhibit MJB-3 (Hearing 57) shall be granted confidential treatment.

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. 07053-05 (cross-referenced Document No. 02023-05) is hereby granted, in part, and denied, in part, as set forth in the body of this Order. It is further

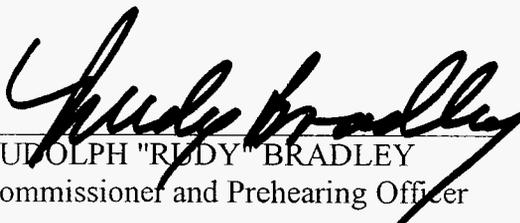
ORDERED that in accordance with Rule 25-22.006(10), Florida Administrative Code, any material denied confidential classification by this Order shall be kept confidential until the time for filing an appeal has expired. It is further

ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 364.183. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period. It is further

ORDERED that this Docket shall remain open.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this  
5th day of August, 2005.

  
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RUDOLPH "RUDY" BRADLEY  
Commissioner and Prehearing Officer

(SEAL)

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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.