

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-05-0841-CFO-TP
ISSUED: August 18, 2005

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION TO PORTIONS
OF DOCUMENTS NOS. 01781-05 AND 02678-05
(CROSS-REFERENCED DOCUMENT NOS. 06557-05, PARTS 1 & 2, AND 07407-05)

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 31, 2005, the Order Establishing Procedure, Order No. PSC-05-0125-PCO-TP, was issued. Thereafter, the schedule was revised by Order No. PSC-05-0402-PCO-TP, issued April 18, 2005. The hearing in this matter was held on July 12, 2005.

On August 1, 2005, Sprint filed a Request for Confidential Classification for a portions of Documents Nos. 01781-05 and 02678-05 (Cross-referenced Documents Nos. 06557-05, Parts 1 & 2, and 07407-05). These documents constitute parts 1 of 10, and 2 of 10 of Hearing Exhibit 3. Specifically, Sprint requests confidential classification of certain information contained in responses to the following discovery requests: Highlighted portions of Interrogatory Nos. 4, 7, 8, 13, and 16; Attachment to Interrogatory No. 1 – KMC Complaint Summary; Highlighted portions of Attachment to Interrogatory No. 13 – KMC Call Diagram; Highlighted portions of Attachment to POD No. 6 – KMC Correlated Call Records; Highlighted portions of Attachment to POD No. 7 – IXC Analysis; Attachment to POD No. 15 – Response to Interrogatory 92 in Docket 031047-TP; Attachment to POD No. 18 – (Sprint – Agilent Master Agreement and Agilent SOW for the KMC Study); Attachment to POD 20 – CLEC Implementation checklist and account profile; Attachment to POD Nos. 6 and 7; Supplemental Attachment to POD 12; Supplemental Attachment to POD 15; Supplemental attachment to POD 15 Open/Pending Issues Report SO; Supplemental attachment to POD 15 Open/pending Issues report MAO; Supplemental attachment to POD 15 ccrkmc 041904.xls and Southern DCRs 8_6_04 (CD only). Sprint contends that these documents contain KMC customer account information that Sprint is

DOCUMENT NUMBER-DATE

08036 AUG 18 05

FPSC-COMMISSION CLERK

required to protect in accordance with Section 364.24, Florida Statutes, as well as pursuant to the parties' interconnection agreement. Sprint also maintains that the documents include information regarding Agilent that would constitute trade secret. Sprint contends the information has not been publicly released.

Pursuant to Section 119.01, Florida Statutes, documents submitted to this Commission are presumed to be 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.

Section 364.183(3), Florida Statutes, in pertinent part, provides:

The term "proprietary confidential business information" means 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 operations, 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.

Based on the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes, it appears that the information for which Sprint seeks confidential classification is information that, if disclosed, would cause harm to the company or its ratepayers because disclosure would violate Section 364.24, Florida Statutes, as well as contractual terms. Thus, this information qualifies as proprietary business information under Section 364.183,

Florida Statutes, and Rule 25-22.006, Florida Administrative Code. As such, Sprint's Request for Confidential Classification of Documents Nos. 01781-05 and 02678-05 (Cross-referenced Documents Nos. 06557-05, Parts 1 & 2, and 07407-05) is hereby granted to the extent set forth in this Order.

It is therefore


ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Sprint-Florida, Incorporated's Request for Confidential Classification of Documents Nos. 01781-05 and 02678-05 (Cross-referenced Documents Nos. 06557-05, Parts 1 & 2, and 07407-05) is hereby granted to the extent set forth in this Order. It is further

ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the document specified 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
18th day of August, 2005.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)

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.