

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-05-0872-PCO-TP
ISSUED: August 31, 2005

ORDER DENYING MOTION TO COMPEL
AS TO INSPECTED DOCUMENTS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

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

On June 15, 2005, KMC served its Fourth Set of Interrogatories (Nos. 83-90) and Fifth Request for Production of Documents (Nos. 74-81) on Sprint. On July 5, 2005, Sprint served its Responses. Thereafter, on July 8, 2005, KMC filed its Motion to Compel Responses to Fourth Set of Interrogatories and Fifth Production of Documents Requests (PODs). Sprint filed its response to the Motion on July 15, 2005, along with a Supplemental Response to POD 74. By Order No. PSC-05-0837-PCO-TP, issued August 18, 2005, the Motion was granted, in part, and denied, in part. As a result of that Order, Sprint was required to submit for an *in camera* inspection e-mails deemed responsive to Interrogatory 83 and Production of Document Request 74, but for which Sprint was asserting the attorney-client privilege and the protections of the work product doctrine. That inspection was conducted on Tuesday, August 23, 2005.

Upon inspection, the Motion to Compel is denied as to production of the subject e-mails. The statements contained therein represent direct communications from Sprint employees and consultants to counsel for Sprint in the context of trial preparation and in pursuit of legal advice. Responsive statements therein from Sprint counsel constitute a mixture of fact and opinion work product and thus, are also not subject to disclosure. See Southern Bell Telephone and Telegraph v. Deason, 632 So. 2d 1377 (Fla. 1994).

DOCUMENT NUMBER-DATE

08326 AUG 31 05

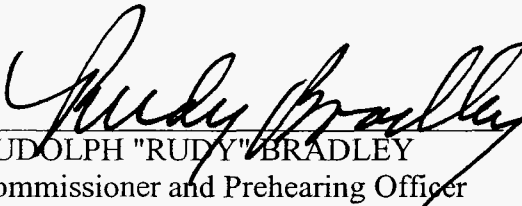
FPSC-COMMISSION CLERK

It is therefore

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that KMC's Motion to Compel Responses to Fourth Set of Interrogatories and Fifth Production of Documents Requests is denied as it relates to the e-mail documents submitted for *in camera* inspection in accordance with Order No. PSC-05-0837-PCO-TP. It is further

ORDERED that this Docket shall remain open.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 31st 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,

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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.