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DIRECT DIAL
(202)424-7771

April 16, 1997

Mr. Blanco S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2340 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: KMC Telecom, Inc. Petition for Arbitration Pursuant to 47 U.S.C. Section 252(b)
of Interconnection Rates, Terms and Conditions and Sprint United of Central
Florida, Inc., Docket No. 970242-TP

Dear Mrs. Bayo:

Enclosed for filing please find an original and fifteen (15) copies of the Motion of KMC
Telecom, Inc. to Strike Rebuttal Testimony and Portions of Prehearing Statement and for
Expedited Treatment. Please date stamp the extra copy of the Motion and return it in the
enclosed self-addressed envelope.

ACK Because the Motion to Strike is less than five pages long, a computer diskette will not be
enclosed.

AFA _____
APP _____ Please call me if you have any questions.
CAF _____

CMH Stavanga
CTR _____

Sincerely,

[Signature]

Richard M. Rindler

LEG 1
LIV 3
Enclosures

REC _____ RECEIVED & FILED
SEL 1 *[Signature]*

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the matter of)	
)	
KMC TELECOM, INC.)	
)	Docket No. 970242-TP
Petition for Arbitration Pursuant to)	
47 U.S.C. §252(b) of Interconnection Rates,)	Filed April 18, 1997
Terms, and Conditions with)	
)	
SPRINT UNITED - CENTEL OF FLORIDA)	
INC. (ALSO KNOWN AS)	
CENTRAL TELEPHONE COMPANY)	
OF FLORIDA AND UNITED TELEPHONE)	
COMPANY OF FLORIDA))	

**MOTION OF KMC TELECOM, INC. TO STRIKE REBUTTAL
TESTIMONY AND PORTIONS OF PREHEARING STATEMENT
AND FOR EXPEDITED TREATMENT**

Pursuant to Rule 25-22.037(2) of the Commission's rules of practice and procedure (Fla. Admin. Code Ann. r. 25-22.037(2) (1997)), KMC Telecom, Inc. (KMC) respectfully moves to strike the Rebuttal Testimony of F. Ben Poag filed by Sprint-Florida, Inc. (Sprint) on April 11, 1997 and references to this rebuttal testimony in the Prehearing Statement filed by Sprint on April 14, 1997. KMC also requests that the Commission consider this motion on an expedited basis and issue its ruling at the prehearing conference that is scheduled in this proceeding for April 21, 1997.

BACKGROUND

KMC filed its petition for arbitration under 47 U.S.C. § 252(b) together with the prepared direct testimony of Tricia Breckenridge on February 25, 1997. In the petition, KMC noted that the sole issue for arbitration related to reciprocal tandem switching compensation and that

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pursuant to 47 U.S.C. § 252(i), KMC proposed to opt into Sprint's interconnection agreement with MFS Communications Company, Inc., which includes the provisions governing such compensation (Section 5.4).

In response, Sprint submitted its answer together with the prepared direct testimony of F. Ben Poag on March 21, 1997. Mr. Poag asserted that reciprocal compensation would be inappropriate because KMC is not providing either tandem switching or tandem transport.

On April 11, 1997, Sprint filed rebuttal testimony of Mr. Poag which made new assertions in opposition to KMC's petition. Mr. Poag asserted that the reciprocal tandem switching compensation provisions in the MFS agreement were somehow superseded by Section 26.2 of that agreement as a result of a ruling in the arbitration proceeding involving Sprint and MCI Communications. On April 14, 1997, Sprint filed its Prehearing Statement, portions of which refer to the rebuttal testimony or rely on the Section 26.2 argument made by Mr. Poag in that rebuttal testimony.

DISCUSSION

The Commission should strike Sprint's improper rebuttal testimony. The Commission's April 1, 1997 Order Establishing Procedure established a procedural schedule that required Sprint's direct testimony to be filed on March 24, 1997 and provided that the testimony to be filed on April 11, 1997 would be "Rebuttal Testimony" (Order No. PSC-97-0364-PCO-TP at 5). Although the Commission in that order did not indicate who may file this rebuttal testimony, such testimony by its nature could not be filed by the Sprint, as respondent in this case.

Even if Sprint could under the order present rebuttal testimony, Mr. Poag's April 11 testimony cannot be considered proper rebuttal testimony. Because KMC never submitted

testimony in response to Mr. Poag's March 24 testimony, there was nothing for Mr. Poag to rebut.

By filing rebuttal testimony, Sprint is attempting to take a "second bite at the apple," by raising new issues that could and should have been addressed in Sprint's March 24 direct testimony. Because Mr. Poag's Section 26.2 argument is premised upon a decision in the MCI/Sprint arbitration (Order No. PSC 97-0294-FOF-TP), which was issued on March 14, 1997, Sprint could have easily included that argument in its direct testimony.¹ Sprint's efforts to raise this issue at this stage in the proceeding is out-of-time. Sprint should not be allowed to exploit the opportunity for rebuttal testimony by presenting new arguments that supplement its direct testimony and exceed the scope of proper rebuttal.

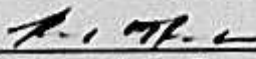
Likewise, the Commission should strike the portions of Sprint's Prehearing Statement that rely on its improper rebuttal testimony. In particular, the Commission should strike the references to the rebuttal testimony and rebuttal exhibit in Sections A ("Witness") and B ("Exhibits") of Sprint's Prehearing Statement. In addition, the Commission should strike item (2) of Section C ("Basic Position") and Sprint's "Position" under Issue 2. In both of these latter items, Sprint refers to the Section 26.2 argument that was raised by Mr. Poag in his improper rebuttal testimony.

¹As a substantive matter, this new argument is invalid and should be rejected by the Commission. Section 26.2 (provided as Exhibit FBP-1 to Sprint's improper rebuttal testimony) states that the MFS/Sprint contract is subject to change by order of the Commission, but the Commission has not specifically or generically ordered any change in that contract. The order in the MCI/Sprint arbitration cited by Sprint in this case did not address the MFS/Sprint contract, and Sprint cannot credibly argue that that order somehow modified that contract. By its terms, moreover, Section 26.2 requires that MFS be provided with Sprint-specific data before any change is effected. Sprint did not assert this occurred.

Finally, KMC asks that the Commission expedite its consideration of this motion to strike so that a ruling can be made at the Prehearing Conference scheduled in this proceeding for April 21, 1997. The Commission should rule on this motion in advance of the hearing, which will commence on April 28, 1997, so that parties will know what issues will be addressed in the hearing and can prepare their cross-examination. Although parties typically have seven days to respond to motions (Fla. Admin. Code Ann. 25-22.038(b)), the Commission could entertain written responses filed before the prehearing conference or oral responses to this motion at the prehearing conference. This would prevent undue delay and uncertainty, while allowing parties a fair opportunity to prepare for the hearing.

WHEREFORE, KMC respectfully requests that the Commission (1) strike in its entirety the Rebuttal Testimony of F. Ben Poag submitted by Sprint on April 11, 1997; (2) strike the references to this improper rebuttal testimony in the Prehearing Statement submitted by Sprint on April 14, 1997; and (3) consider this motion on an expedited basis so that the Commission can make its ruling at the prehearing conference on April 28, 1997.

Respectfully submitted,


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Attorney for KMC Telecom, Inc.

April 16, 1997

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by facsimile and overnight delivery this 16th day of April, 1997, to the following:

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Charles J. Pellegrini
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