

State of Florida



Public Service Commission

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COMMISSION CLERK

DATE: JUNE 6, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (TEITZMAN) *WT* *W*
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BARRETT) *meB* *PD*

RE: DOCKET NO. 011615-TP - COMPLAINT OF KMC TELECOM III, INC.
FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT WITH SPRINT-
FLORIDA, INCORPORATED.

AGENDA: 06/18/02 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\011615.RCM

CASE BACKGROUND

KMC Telecom III, Inc. (KMC), is an alternative local exchange carrier (ALEC) operating in the state of Florida. Effective April 22, 1999, KMC opted into an existing Interconnection and Resale Agreement (Agreement) between Sprint-Florida, Incorporated (Sprint) and MCImetro Transmission Services, Inc. (MCImetro). The adoption of the Interconnection and Resale Agreement by KMC was approved by this Commission in Docket No. 990734-TP, Order No. PSC-99-1413-FOF-TP. The Interconnection and Resale Agreement governs the relationship between the companies regarding local interconnection and the exchange of traffic pursuant to 47 U.S.C. 251.

On November 29, 2001, KMC filed a formal complaint with this Commission alleging that Sprint had violated applicable law and the terms of the Agreement. Sprint filed its Motion to Dismiss the Complaint on December 24, 2001. On December 27, 2001, KMC filed its Motion for Extension of Time to file a response, which was granted

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by the Commission by Order No. PSC-02-0048-PCO-TP. KMC filed its Response to Sprint's Motion to Dismiss and a Request for Oral Argument on January 10, 2002. At the March 5, 2002 Agenda Conference, the Commission granted KMC's Request for Oral Argument and held a ruling on Sprint's Motion to Dismiss in abeyance until the completion of a thirty (30) day period of negotiations that began on March 5, 2002. At the end of the thirty (30) day period, the parties requested additional time to continue negotiations. On May 31, 2002, KMC filed a Notice of Voluntary Dismissal.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge KMC Telecom III, Inc.'s Notice of Voluntary Dismissal?

RECOMMENDATION: Yes. KMC's voluntary dismissal divests the Commission of jurisdiction over this matter. The only further action the Commission should take is to acknowledge the dismissal, find that any pending motions are rendered moot, and close the docket. (TEITZMAN)

STAFF ANALYSIS: The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975). It is also established civil law that once a timely voluntary dismissal is taken, the trial court loses its jurisdiction to act. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So.2d 68,69 (Fla. 1978). The only additional action the Commission should take is to acknowledge KMC's dismissal and close the docket. Staff recommends that the Commission find that Sprint's Motion to Dismiss filed December 24, 2001, is rendered moot by KMC's voluntary dismissal.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. (TEITZMAN)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed.