

ORIGINAL



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August 9, 2002

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
& Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

020876-TP

RECEIVED FPSC
02 AUG - 9 PM 4:40
COMMISSION
CLERK

Re: Approval of Amendment No. One to Interconnection & Resale Agreement
between Sprint-Florida, Incorporated and KMC Telecom III, Inc. and
KMC Telecom V, Inc.

Dear Ms. Bayó:

Please find enclosed for approval and filing an original and five copies of the
Amendment No. One to the Interconnection and Resale Agreement between
Sprint-Florida, Incorporated (Sprint) and KMC Telecom III, Inc. and
KMC Telecom V, Inc.

If you have any questions on this matter, please contact my assistant Teresa Harless
at 850-599-1563.

Sincerely,

Susan S. Masterton

cc: Ms. Marva Johnson, Director
ILEC Compliance
KMC Telecom
1755 North Brown Road
Lawrenceville, Georgia 30043

Enclosure

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

08439 AUG-9 02

FPSC-COMMISSION CLERK..

**AMENDMENT NO. 1 TO
INTERCONNECTION AND RESALE AGREEMENT
BETWEEN
SPRINT-FLORIDA, INCORPORATED AND
KMC TELECOM III, INC. AND KMC TELECOM V, INC.**

This Amendment No. 1 is made this 26th day of June, 2002, by and between Sprint-Florida, Incorporated ("Sprint") and KMC Telecom III, Inc. and KMC Telecom V, Inc. (collectively "KMC"). (Sprint and KMC may be referred to individually as a "Party" and collectively as the "Parties").

BACKGROUND:

Whereas, the Parties entered into an Interconnection and Resale Agreement ("Agreement"), which consists of an opt-in of Sprint and MCImetro Access Transmission Services, Inc. interconnection and resale agreement, on April 1, 1999 for the state of Florida.

Whereas, on February 1, 2002, Sprint elected to offer the interim compensation rates established by the Federal Communications Commission ("FCC") in its *Order on Remand and Report and Order*, FCC 01-131, CC Dockets No. 96-98 and 99-68, adopted April 18, 2001 (the "ISP Compensation Order") and wish to amend the Agreement to reflect such election.

Whereas, the Parties also wish to amend the Agreement to reflect the application of reciprocal compensation for Local Traffic consistent with the FCC Rule 51.711(a)(3) (47 C.F.R. § 51.711(a)(3)) and any Applicable Rules for the state of Florida.

Whereas, the Parties are currently negotiating a replacement interconnection and resale agreement. It is the Parties intent to negotiate a replacement interconnection and resale agreement by August 5, 2002. The replacement interconnection and resale agreement terms will supercede the current Agreement and all amendments, including this Amendment No. 1.

In consideration of the promises and agreements contained in this Amendment No. 1, the Parties agree as follows:

1. This Amendment No. 1 reflects the application of the rates contained in the ISP Compensation Order and FCC Rule 51.711(a)(3) (47.C.F.R. § 51.711(a)(3)) and any applicable state law effective May 1, 2002.
2. Except as otherwise indicated, defined terms in this Amendment have the same meaning as in the Agreement. The following definitions are added or substituted to the Agreement:

DOCUMENT NUMBER DATE

1

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FPSC-COMMISSION CLERK

- 2.1 **“FCC Interim Intercarrier Compensation Mechanism”** means the interim intercarrier compensation mechanism established by the FCC in paragraphs 77-94 of the ISP Compensation Order.
- 2.2 **“Information Access Traffic,”** for the purposes of this Agreement, is traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission between the Parties.
- 2.3 **“Local Traffic,”** for the purposes of this Agreement the Parties shall agree that “Local Traffic” means traffic (excluding CMRS traffic) that is originated and terminated within Sprint’s local calling area, or mandatory expanded area service (EAS) area, as defined by State commissions or, if not defined by State commissions, then as defined in existing Sprint tariffs. Notwithstanding, the Parties agree that if the Commission has defined the local calling area for purposes of reciprocal compensation in an order applicable to the Parties, the Parties will abide by that order. For this purpose, Local Traffic does not include any Information Access Traffic (*see* ISP Compensation Order); and/or (2) telecommunications traffic exchanged by a LEC and a CMRS provider that originates and terminates within the same Major Trading Area, as defined in 47 CFR § 24.202(a). Neither Party waives its’ rights to participate and fully present its’ respective positions in any proceeding dealing with the compensation for Internet traffic.

I. Information Access Traffic

- 3. All Local Traffic and Information Access Traffic delivered to one Party by the other Party that does not exceed a 3:1 ratio of terminating to originating minutes of use, on a state-wide basis, is presumed to be Local Traffic.

- 3.1 The rates to be charged for the exchange of Local Traffic are the rates set forth in the Agreement and are reflected below .

3.1.1 Local Traffic Rate:

End Office:	\$0.003671
Tandem Switching:	\$0.002085
Common Transport:	\$0.000711
Combined Tandem Rate:	\$0.006467

- 4. Consistent with Sprint’s election of the FCC Interim Intercarrier Compensation Mechanism, Information Access Traffic is not considered Local Traffic subject to reciprocal compensation, but is instead traffic subject to compensation as described by the FCC Interim Intercarrier Compensation Mechanism. Information Access Traffic will be compensated at the rates established by the FCC. The rates shall be applied consistent with the provisions of Attachment IV of the Agreement.

- 4.1 Beginning with the effective date of this Amendment No. 1, the terminating Party will bill the originating Party a rate of \$0.0010 per MOU for Information Access Traffic delivered to the terminating Party.
 - 4.2 To the extent that this Amendment No. 1 remains in effect, beginning on June 14, 2003, the terminating Party will bill the originating Party a rate of \$0.0007 per MOU for Information Access Traffic delivered to the terminating Party.
5. All combined Local Traffic and Information Access Traffic delivered to a Party that exceeds a 3:1 ratio of terminating to originating traffic minutes of use, on a state-wide basis, is presumed to be Information Access Traffic. This presumption may be rebutted by either Party consistent with the provisions of the ISP Compensation Order.
6. Notwithstanding anything to the contrary, the volume of Information Access Traffic for which one Party may bill the other is subject to a growth cap. The growth cap will be applied as follows.
 - 6.1. To determine the base-line for compensation purposes calculate the number of Information Access Traffic minutes for which each Party was compensated during the first quarter of 2001, multiply times four and multiply that number by 1.10.
 - 6.2. In 2002, the Parties will compensate each other for Information Access Traffic up to a ceiling equal to the number of Information Access minutes for which each Party was compensated during 2001 on an annualized basis, plus an additional ten percent growth factor.
 - 6.3. To the extent this Amendment No. 1 remains in effect in 2003, the Parties will compensate each other for Information Access Traffic up to the number of Information Access Traffic minutes for which each Party was compensated during 2002.
7. If at any point after the Effective Date of this Amendment, Sprint no longer offers to terminate Local Traffic or Information Access Traffic at the FCC Rates set forth in subsection 4 for any carrier, including but not limited to CLECs and CMRS providers, Sprint shall notify KMC immediately of this choice and the rate of Information Access Traffic termination shall be the rate for reciprocal compensation for Local Traffic as set forth in Table One of the Agreement. If the Parties are unable to agree on whether Sprint is offering to exchange traffic as described in this Part I, they shall invoke the dispute resolution procedures in the Agreement.

II. Tandem Switching

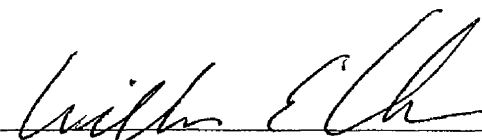
8. The Parties agree that, for purposes of this Agreement, KMC's switch shall be considered to serve a geographic area comparable to the geographic area served by Sprint's local tandem switch (the "Sprint Switch Service Area") within the meaning of FCC Rule 51.711(a)(3) (47 C.F.R. § 51.711(a)(3)) and any applicable state law. KMC has provided a letter of self-certification that it serves a geographic area comparable to the geographic area served by Sprint's tandem switch. Sprint has reviewed KMC's self-certification and agrees that for purposes of this Amendment No. 1, KMC meets the geographic comparability requirements set forth in FCC Rule 51.711(a)(3) (47 C.F.R. § 51.711(a)(3)) and applicable state law.

III. Miscellaneous Terms and Conditions

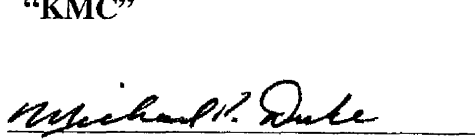
- 9. Other than as set forth above, the Agreement remains unchanged and in full force and effect. In the event of a conflict between the terms of the Agreement and this Amendment, this Amendment will control.
- 10. Except as otherwise indicated, defined terms in this Amendment No. 1 have the same meaning as in the Agreement.
- 11. This Amendment No. 1 executed by authorized representatives of Sprint and KMC is made a part of and incorporates the terms and conditions of the Agreement.
- 12. The Parties agree that the Commission and/or FCC has jurisdiction to address the issues and disputes that may arise during and as a result of the implementation of this Amendment. Except to the extent that certain issues are reserved herein for Commission determination, either Party may choose to bring a dispute hereunder before any government entity possessing jurisdiction to address such disputes.

IN WITNESS WHEREOF, Sprint and KMC has caused this Amendment No. 1 to be executed by its duly authorized representatives.

"Sprint"

By: 
Name (typed): William E. Cheek
Title: President – Wholesale Markets
Date: 7/22/02

"KMC"

By: 
Name: Michael P. Duke
Title: Director – Government Affairs
Date: 6-30-02