

LAW OFFICES
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September 8, 2003

BY HAND DELIVERY

Ms. Blanca Bayó, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 990649B-TP

Dear Ms. Bayó:

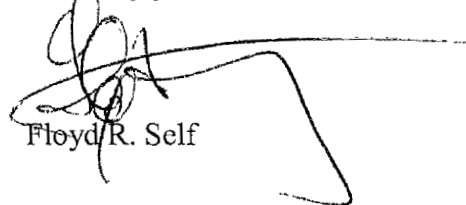
Enclosed for filing on behalf of Florida Digital Network, Inc. and KMC Telecom III, LLC are the following documents:

1. An original and fifteen copies of Florida Digital Network, Inc. and KMC Telecom III, LLC's Alternative Motion to Stay the Final Order on Rates for Unbundled Network Elements Provided by Sprint-Florida Incorporated; and
2. An original and fifteen copies of the Joint Request for Oral Argument of Florida Digital Network, Inc. and KMC Telecom III, LLC.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,



Floyd R. Self

FRS/amb
Enclosure
cc: Parties of Record

DOCUMENT NUMBER 990649B-TP
08456 SEP-03
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into Pricing of)
Unbundled Network Elements)
(Sprint/Verizon Track))
_____)

Docket No. 990649B-TP
Filed: September 8, 2003

**FLORIDA DIGITAL NETWORK, INC. AND KMC TELECOM III, LLC'S
ALTERNATIVE MOTION TO STAY THE FINAL ORDER
ON RATES FOR UNBUNDLED NETWORK ELEMENTS
PROVIDED BY SPRINT-FLORIDA INCORPORATED**

Florida Digital Network, Inc. ("FDN") and KMC Telecom III, LLC ("KMC"), pursuant to Florida Administrative Code Rule 28-106.204(1), hereby file this Alternative Motion for Stay regarding the January 8, 2003, Final Order on Rates for Unbundled Network Elements Provided by Sprint-Florida Incorporated, and in support thereof, do hereby state:

I. FACTUAL BACKGROUND

1. On January 8, 2003, the Commission entered its Final Order on Rates for Unbundled Network Elements Provided by Sprint-Florida Incorporated in the above referenced docket. This decision is reflected in Order No. PSC-03-0058-FOF-TP (hereinafter, the "Sprint UNE Order").
2. On January 23, 2003, FDN and KMC timely filed a Motion for Reconsideration, seeking reconsideration of the Sprint UNE Order. Pursuant to Florida Administrative Code Rule 25-22.060(1)(c), the Sprint UNE Order was not "rendered" pending final disposition of the motion.
3. At least as early as May, 2003, Sprint began notifying CLECs, including FDN and KMC, that their respective interconnection agreements were required to be immediately amended to incorporate the new rates, and that the failure to accept their "negotiation" of the amendment would result in Sprint filing a complaint with this Commission, potential termination of the

interconnection agreement, or some other unilateral action.¹ A representative copy of the Sprint letter is attached as Exhibit 1.

4. On June 17, 2003, the Motion for Reconsideration was heard at a scheduled meeting of the Commission in Tallahassee, Florida. On August 8, 2003, the Commission entered its Order Denying FDN and KMC's Motion for Reconsideration of Sprint UNE Order. Order No. PSC-03-0918-FOF-TP (hereinafter, the "Sprint UNE Reconsideration Order"). The Sprint UNE Reconsideration Order had the effect of allowing the Sprint UNE Order to have been "rendered" as of August 8, 2003, for purposes of seeking an appeal.

5. Pursuant to Article III, Section 3(b)(2), of the Florida Constitution, and Section 364.381, of the Florida Statutes, coincident with the filing of this Motion, KMC is timely filing with the Supreme Court its Notice of Appeal of the Sprint UNE Order, as made final by the Sprint UNE Reconsideration Order. Also today, FDN is separately filing its Complaint for Declaratory and Equitable Relief with the United States District Court for the Northern District of Florida.

6. FDN and KMC believe that the language of the Sprint UNE Order is clear and unambiguous — that the rates therein are default, voluntary rates. Hence, FDN and KMC believe that, if the commission agrees with that construction of the Sprint UNE Order, a stay of the Sprint UNE Order pending the KMC and FDN appeals is unnecessary. However, if the Commission allows Sprint to unilaterally dictate the amendment of existing and valid interconnection agreements, and imposition of the new rates on CLECs, FDN and KMC request that the Commission enter a stay of the Sprint UNE Order pending a determination of the issues to be raised in the separate appeals.

¹ Indeed, it appears, for example that Sprint has already unilaterally implemented the new zones as set forth in the Sprint UNE Order without any amendment.

II. IF THE COMMISSION CONSTRUES THE SPRINT UNE ORDER TO ESTABLISH ONLY DEFAULT, VOLUNTARY RATES, A STAY IS UNNECESSARY

7. The Commission should recognize that it does not have to issue a stay unless the Commission first determines that the Sprint UNE Order establishes **immediate and mandatory** rates for all CLECs utilizing the subject Sprint services. The Sprint UNE Order does not so provide, and no determination has been made that the FDN and KMC interconnection agreements with Sprint require immediate renegotiation. Enforcement of the Sprint UNE Order's clear language that the rates therein are default rates, subject to voluntary implementation, properly avoids the need for the Commission to address the Motion for Stay and all the issues associated with the granting of a stay.

8. The Sprint UNE Order provides that:

We find that recurring and non-recurring rates and charges shall take effect when existing interconnection agreements are amended to incorporate the approved rates, and the amended agreements are deemed approved by us. (e.s.)

Order No. PSC-03-0058-FOF-TP, at 218.

9. Renegotiation of an interconnection agreement before the agreement's expiration may be required by the terms of a particular interconnection agreement. The interconnection agreements between Sprint and FDN and KMC do not require renegotiation based on the Sprint UNE Order. FDN and KMC's interconnection agreements (excerpts of which are attached as Exhibit 2) provide that either party may require renegotiation in the event of an amendment to the Act or an effective regulatory or judicial decision that revises, modifies or reverse "Applicable Rules." "Applicable Rules" are defined as "the texts of the Act and the **rules and regulations** promulgated thereunder by the FCC and the Commission as of the Effective Date." (Emphasis supplied.)

10. The plain and ordinary meaning of “rule or regulation” as that term is used in the FDN and KMC interconnection agreements with Sprint does not encompass an order as that term is used in Florida Statutes Chapter 120. The Sprint UNE Order does not purport to be a “rule or regulation,” and any attempt to characterize the Sprint UNE Order as such would constitute a violation of the rule making requirements of Florida Statutes Section 120.54. Thus, the Sprint UNE Order does not constitute a revision, modification, or reversal of a “rule or regulation,” and FDN and KMC have no obligation to automatically accept the rates in the Sprint UNE Order, although they may certainly choose to do so.

11. Nothing in the Sprint UNE Order states that the rates contained therein are immediate and mandatory for all CLECs ordering Sprint UNE services. The Sprint UNE Order did not (and could not) establish a rule under the Administrative Procedures Act. While the Sprint UNE Order does address the effective date of the rates therein, i.e. at the time the Commission approves either a new interconnection agreement or an amendment to an existing interconnection agreement, no part of the Sprint UNE Order requires CLECs to immediately negotiate or enter into amendments to their existing, valid interconnection agreements.² The Sprint UNE Order was not issued at the conclusion of an arbitration case filed under Section 252 of the Telecommunications Act of 1996, a proceeding by which the Commission will typically order the parties to file an agreement consistent with the Commission’s rulings. Indeed, language requiring CLECs to negotiate or sign anything is noticeably absent from the Sprint UNE Order. Nothing in the Sprint UNE Reconsideration Order changes the Sprint UNE Order decision on this issue.

² Significantly, the Commission rejected Sprint’s proposal of a mandatory and uniform effective date (sixty days after the date of the Order) in favor of a negotiated agreement process. *Sprint UNE Order*, at p. 217.

12. Contemporaneous with the release of the Sprint UNE Order, the Commission issued a press release (a copy of which is attached hereto as Exhibit 3). This press release is consistent with the language of the Sprint UNE Order in that the Commission did not order mandatory implementation, let alone mandatory negotiation, of the new rates. The press release simply states, “The UNE rates set by the Commission . . . are default rates, meaning that companies are free to negotiate different rates that suit their mutual interests.”

13. The optional, default approach reflected in the Sprint UNE Order is entirely consistent with prior Commission decisions. For example, the decision in the Sprint UNE Order is expressly linked to the decision in the BellSouth UNE case. There is no statement in the BellSouth UNE case that the rates in that case are immediately effective. Order No. PSC-01-1181-FOF-TP, at 547 (May 25, 2001) (“BellSouth’s UNE rates, as established herein, may be incorporated as amendments”). In the “generic” interconnection compensation case, Docket No. 000075, the Commission accepted an optional, voluntary nature of the decision. In setting reciprocal compensation, the FPSC said:

Therefore, the policies and procedures established in this docket shall be on a going forward basis, allowing carriers, at their discretion, to incorporate provisions into new and existing agreements. Nothing in this Order is intended to discourage parties from negotiating other, mutually agreed-on terms or conditions.

Order No. PSC-02-1248-FOF-TP, at 36 (Sept. 10, 2002).

14. Based on the foregoing, if the Commission accepts a construction of the Sprint UNE Order as establishing only default, voluntary rates on a going forward basis, and not mandatory or self-executing rates, FDN and KMC would have no objection to the issuance of an order by the Commission denying the Motion for Stay as unnecessary. The Commission should thus confirm that

the Sprint UNE Order is not a rule or regulation, and that the rates therein do not require the immediate renegotiation of existing and valid interconnection agreements. By enforcing the Commission's decision as stated therein, the following Motion for Stay would be rendered moot.

III. MOTION FOR STAY

15. In the event the Commission changes the decision expressed in the Sprint UNE Order to require the rates to become immediately effective, then FDN and KMC respectfully request that the Commission stay the effectiveness of the rates in the Sprint UNE Order pending the resolution of their respective appeals to the United States District Court and the Florida Supreme Court where the rates may be overturned. FDN and KMC believe that the Commission's intent as expressed in the Sprint UNE Order regarding how the rates therein were to be implemented was clear. However, Sprint's threats of legal and other unilateral actions subsequent to the Sprint UNE Order becoming final necessitate FDN and KMC seeking this stay of those rates.

16. As indicated in paragraph 3 herein, Sprint has notified FDN and KMC that their existing interconnection agreements with Sprint were required to be immediately amended to incorporate the new rates, and that the failure to accept their "negotiation" of the amendment would result in a complaint, termination, or other unilateral action. *See Exhibit 1.*

17. FDN and KMC assert that the Sprint UNE rates approved by the Commission will result in a significant increase in the rates charged by Sprint to CLECS such as FDN and KMC for UNEs and other various interconnection services. In some cases, the Sprint UNE Order will result in wholesale rates for particular UNEs rising to 400% of the retail rates charged by Sprint to its customers for those services. The effect of implementation of the rates before the appeal process has been completed will be three-fold. These rates, if allowed to become effective, will:

- a. make it difficult, if not impossible, for FDN and KMC to compete with Sprint for new customers;
- b. make it difficult, if not impossible, for FDN and KMC to offer additional, competitively priced services to its existing customers; and
- c. make it difficult, if not impossible, for FDN and KMC to retain existing customers against efforts by Sprint to reclaim its monopoly market position.

18. The ultimate effect of the implementation of the new UNE rates will be to cripple the ability of CLECs operating in Sprint's service area to compete. Once customers, new or existing, are lost, the likelihood of the CLECs being able to regain those customers in an environment where wholesale rates are higher than retail rates is dramatically diminished. Even if customers can be regained, some CLECs, including FDN and KMC, may be unable to withstand the financial hardship that would occur during the pendency of any appeal if the rates are allowed to go into effect. Thus, while the Federal District Court and Florida Supreme Court may ultimately find that some or all of the rates established by the Sprint UNE Order are unlawful, the minimal competitive presence in Sprint's ILEC service area may be driven out of the market prior to any final appellate decision absent a stay.

19. Florida Administrative Code Rule 25-22.061(2), provides that:

Except as provided in subsection (1), a party seeking to stay a final or nonfinal order of the Commission pending judicial review shall file a motion with the Commission, which shall have authority to grant, modify, or deny such relief. A stay pending review may be conditioned upon the posting of a good and sufficient bond or corporate undertaking, other conditions, or both. In determining whether to grant a stay, the Commission may, among other things, consider:

- (a) Whether the petitioner is likely to prevail on appeal;

(b) Whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and

(c) Whether the delay will cause substantial harm or be contrary to the public interest.

20. FDN and KMC aver that based on the issues identified in its earlier filed pleadings in this docket, they are likely to prevail on appeal. Those issues include, but are not limited to:

a. The non-representative nature of Zone 1 rates for loops, and the significant and unsupported increases in rates for Zones 2, 3 and 4;

b. The lack of standardization in the Sprint cost model and the resulting disparity in the implementation of rates and impossibility of ascertaining compliance with the TELRIC pricing requirements;

c. The current lack of meaningful competition in Sprint's service areas, and the further decrease in competition reasonably expected as a result of the implementation of the new rates;

d. The admitted lack of competent, substantial evidence to support the Commission's decisions on rates;

e. The Commission's reliance on assumptions that were not TELRIC compliant;

f. The failure of the Commission to apply the correct burden of persuasion, and the application of a burden on Sprint to justify its rates with probative evidence and analytically defensible methodologies that was contrary to state and Federal law, and established Commission precedent and policy; and

g. The Commission's violation of Florida Statutes Section 286.012 resulting from Commissioner Davidson's abstention from voting on the Motion for Reconsideration in this Docket.

21. For the reasons set forth in the preceding paragraphs, FDN and KMC, as CLECs operating in Sprint's service area, will suffer irreparable harm if the new UNE rates are implemented prior to their ability to have their arguments as to error in the setting of the new UNE rates considered by the Federal Court and the Supreme Court. These rates, especially when combined with the new rate zones, are not just and reasonable as required by the law. As set forth herein, the reasonable result of requiring competitive CLECs to absorb the cost increases authorized by the Sprint UNE Order while appeals are ongoing will severely eliminate the competitive choices available to consumers and irreparably harm the FDN and KMC competitive business interests.

22. The impact of the rates on the ability of affected CLECs to compete is contrary to the public interest as established by the Legislature and this Commission. Competitive choice for customers, the hallmarks of the federal Telecommunications Act of 1996 and of the 1995 and subsequent amendments to Florida Statutes Chapter 364, require the presence of competitive carriers. The presence of nascent competitors in Sprint's territory today is limited almost exclusively to business customers. If the Sprint UNE Order is allowed to come into effect there will continue to be no meaningful competitive choice for residential customers and very limited competitive choice for business customers. Without competitive carriers there is no competitive choice for customers. The end result will be the retrenchment of the Sprint monopoly position in the marketplace. This result is unquestionably contrary to the public interest as expressed by the Florida Legislature, the United States Congress, and this Commission.

23. Under all of the facts and circumstances of this case, it is unnecessary and inappropriate to seek any kind of bond or corporate undertaking on FDN or KMC, or to impose any other conditions on the appellants. FDN and KMC are facilities based carriers with long-standing

interconnection arrangements with Sprint. Given the constantly changing telecommunications market, it would be extremely difficult to provide any accurate assessment of the amount that may be at issue as a result of the immediate and mandatory implementation of the new rates. Thus, there is no basis on which to determine the amount that would be appropriate for the bond. In addition, the cost of the bond, which is expensive in any event, would have to be passed to the consumer, thereby magnifying the extent to which the immediate implementation of the new rates would be contrary to the public interest. Finally, with the impending petitions for arbitration that are expected to be filed new rates could well be established before the appeals are concluded.

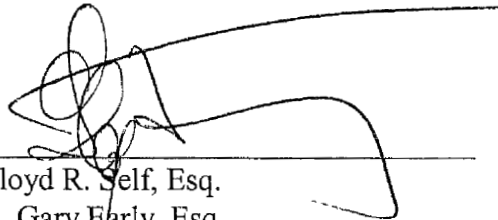
24. Pursuant to Florida Administrative Code Rule 25-22.061(2) and Florida Rules of Appellate Procedure Rule 9.310(a), the Commission, as the lower tribunal, has the authority to grant a stay of the Sprint UNE Order without the requirement that the parties post a bond. Therefore, for the reasons set forth herein, FDN and KMC request that the Commission exercise its discretion to grant a stay of the Sprint UNE Order without the requirement that a bond be posted.

25. FDN and KMC have met the conditions warranting a stay of the Final Order on Rates for Unbundled Network Elements Provided by Sprint-Florida Incorporated as such conditions are established by Florida Administrative Code Rule 25-22.061(2) in the event the Commission first determines the Sprint UNE Order rates are not default, voluntary rates.

WHEREFORE, for the reasons set forth herein, Florida Digital Network, Inc. and KMC Telecom III, LLC, respectfully request that the Commission enforce the clear terms of the Sprint UNE Order to prohibit Sprint from requiring immediate and mandatory renegotiation of existing and valid interconnection agreements, or, in the alternative, that the Commission, pursuant to its authority under Florida Administrative Code Rule 25-22.061(2), enter a Stay of its January 8, 2003,

Final Order on Rates for Unbundled Network Elements Provided by Sprint-Florida Incorporated
until the resolution of the appeals are concluded.

Respectfully submitted, this 8th day of September, 2003.



Floyd R. Self, Esq.
E. Gary Early, Esq.
Messer Caparello & Self, P.A.
215 South Monroe Street, Suite 701
Tallahassee, FL 32302

Attorneys for KMC Telecom III, LLC

and

Matthew Feil, Esq.
Florida Digital Network, Inc.
390 North Orange Avenue, Suite 2000
Orlando, Florida 32801

Attorney for Florida Digital Network, Inc.



John Chuang
Sr. Manager-Local Markets
Wholesale Markets

Local Telecommunications Division
6480 Sprint Parkway
KSOPHM0310-3A464
Overland Park, Kansas 66251
Voice 913 315 7844
Fax 913 315 0628

Via Overnight Mail

May 21, 2003

Mike Gallagher
CEO
Florida Digital Networks, Inc.
390 North Orange Ave, Ste. 2000
Orlando, FL 32801

Re: Florida Rate Amendment to Interconnection and Resale Agreement

Dear Mr. Gallagher:

On January 8, 2003, the Florida Public Service Commission issued the Final Order on Rates for Unbundled Network Elements Provided by Sprint-Florida, Incorporated, Docket No 990649B-TP, Order No. PSC-03-0058-FOF-TP which approved new rates for Sprint's unbundled network elements ("Order"). Pursuant to Part B, Section 3.2 of your agreement, please accept this letter as notice to amend the above referenced agreement to incorporate terms of the FL PSC Order.

Please execute all three signature pages of the enclosed document and return back to me for further processing. A fully executed original will be returned to you for your records.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions or concerns.

Sincerely,

John Chuang
Sr. Manager - Local Markets

Enclosure

EXHIBIT 1

**AMENDMENT NO. 1 TO
INTERCONNECTION AND RESALE AGREEMENT**

This Amendment No. 1 ("Amendment"), effective June 1, 2003, is entered into by and between Florida Digital Network, Inc. ("CLEC"), a Delaware corporation and Sprint-Florida, Incorporated ("Sprint"), a Florida corporation (Sprint and CLEC may be referred to individually as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, CLEC and Sprint entered into an Interconnection and Resale Agreement dated December 27, 2001 ("Agreement"); and

WHEREAS, The Florida Public Service Commission issued the Final Order on Rates for Unbundled Network Elements Provided by Sprint-Florida, Incorporated, Docket No. 990649B-TP, Order No. PSC-03-0058-FOF-TP, issued on January 8, 2003 (the "Order") in which it approved new rates for Sprint's unbundled network elements (the "New Rates"); and

WHEREAS, CLEC and Sprint desire to modify the Agreement to incorporate the New Rates; and

NOW THEREFORE, in consideration of the promises and agreements contained in this Amendment, the Parties agree as follows:

AMENDMENT

1. CLEC and Sprint agree to substitute the following Table One for the Table One in the Agreement.
2. Except as modified herein, the terms and conditions of the Agreement shall continue in full force and effect. In the event of a conflict between the terms of the Agreement and this Amendment, this Amendment will control.

IN WITNESS WHEREOF, the Parties have executed this Amendment effective the year and day first written above.

SPRINT

CLEC

By: _____
Name: William E. Cheek
(typed): _____
Title: President - Wholesale Markets
Date: _____

By: _____
Name: _____
Title: _____
Date: _____



John Chuang
Sr. Manager-Local Markets
Wholesale Markets

Local Telecommunications Division
6480 Sprint Parkway
KSOPHM0310-3A464
Overland Park, Kansas 66251
Voice 913 315 7844
Fax 913 315 0628

Via Overnight Mail

July 3, 2003

Mike Gallagher
CEO
Florida Digital Networks, Inc.
390 North Orange Ave, Ste. 2000
Orlando, FL 32801

Re: Florida Rate Amendment to Interconnection and Resale Agreement

Dear Mr. Gallagher:

We are in receipt of your letter dated June 20, 2003 in which FDN disputes the legality of the new rates ordered by the Florida Public Service Commission order at Docket No 990649B-TP, Order No. PSC-03-0058-FOF-TP ("Order"). It is Sprint's position, however, that this dispute does not relieve FDN of its obligation under the Interconnection and Resale Agreement ("Agreement") to negotiate in good faith to amend the Agreement to reflect the pricing and terms of the Order.

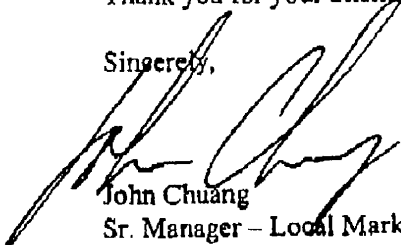
Part B, Section 3.2 of the Agreement states:

"In the event of any amendment of the Act, any effective legislative action or any effective regulatory or judicial order, rule, regulation, arbitration award, dispute resolution procedures under this Agreement or other legal action purporting to apply the provisions of the Act to the Parties or in which the court, FCC or the Commission makes a generic determination that is generally applicable which revises, modifies or reverses the Applicable Rules (individually and collectively, "Amended Rules"), either Party may, by providing written notice to the other Party, require that the affected provisions of this Agreement be renegotiated in good faith and this Agreement shall be amended accordingly to reflect the pricing, terms and conditions of each such Amended Rules relating to any of the provisions in this Agreement."

We believe that it is clear that the Order falls under the definition of an Amended Rule covered by Section 3.2 and any action by FDN to delay or avoid execution of an amendment appears as bad faith negotiations. Accordingly, Sprint will take appropriate action allowed under the Agreement.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,



John Chuang
Sr. Manager - Local Markets



John Chuang
Sr. Manager-Local Markets
Wholesale Markets

Local Telecommunications Division
6480 Sprint Parkway
KSOPHM0310-3A464
Overland Park, Kansas 66251
Voice 913 315 7844
Fax 913 315 0628

Via Overnight Mail

May 13, 2003

Director – Carrier Compliance
KMC Telecom Holdings, Inc.
1755 North Brown Road
Lawrenceville, GA 300043

Re: Amendment to KMC/Sprint Master Network Interconnection and Resale Agreement dated October 16, 2000

Dear Customer:

On January 8, 2003, the Florida Public Service Commission issued the Final Order on Rates for Unbundled Network Elements Provided by Sprint-Florida, Incorporated, Docket No 990649B-TP, Order No. PSC-03-0058-FOF-TP which approved new rates for Sprint's unbundled network elements ("Order"). Pursuant to Part A, Section 2.2, please accept this letter as notice to amend the above referenced agreement to incorporate terms of the FL PSC Order.

If appropriate, please execute the attached all three signature pages of the enclosed document and return back to me for further processing. A fully executed original will be returned to you for your records.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions or concerns.

Sincerely,

John Chuang
Sr. Manager – Local Markets

Enclosure

**AMENDMENT NO. ___ TO
INTERCONNECTION AND RESALE AGREEMENT**

This Amendment No. ___ ("Amendment"), effective ___, 2003, is entered into by and between KMC Telecom III, Inc. and KMC Telecom V, Inc. ("KMC"), a _____ corporation and Sprint-Florida, Incorporated ("Sprint"), a Florida corporation (Sprint and KMC may be referred to individually as a "Party" and collectively as the "Parties").

RECITALS

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

WHEREAS, The Florida Public Service Commission issued the Final Order on Rates for Unbundled Network Elements Provided by Sprint-Florida, Incorporated, Docket No. 990649B-TP, Order No. PSC-03-0058-FOF-TP on January 8, 2003 (the "Order") in which it approved new rates for Sprint's unbundled network elements (the "New Rates"); and

WHEREAS, KMC and Sprint desire to amend the Agreement to incorporate the New Rates; and

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

AMENDMENT

1. KMC and Sprint agree to substitute the following Table One for the Table One in the Agreement.
2. Except as modified herein, the terms and conditions of the Agreement shall continue in full force and effect. In the event of a conflict between the terms of the Agreement and this Amendment, this Amendment will control.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 2 effective the year and day first written above.

SPRINT

KMC

"Sprint"

"KMC"

By: _____
Name: William E. Cheek
(typed): _____
Title: President – Wholesale Markets
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

3. REGULATORY APPROVALS

- 3.1. This Agreement, and any amendment or modification hereof, will be submitted to the Commission for approval in accordance with § 252 of the Act within thirty (30) days after obtaining the last required Agreement signature. Sprint and CLEC shall use their best efforts to obtain approval of this Agreement by any regulatory body having jurisdiction over this Agreement. In the event any governmental authority or agency rejects any provision hereof, the Parties shall negotiate promptly and in good faith such revisions as may reasonably be required to achieve approval.
- 3.2. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the texts of the Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date ("Applicable Rules"). In the event of any amendment of the Act, any effective legislative action or any effective regulatory or judicial order, rule, regulation, arbitration award, dispute resolution procedures under this Agreement or other legal action purporting to apply the provisions of the Act to the Parties or in which the court, FCC or the Commission makes a generic determination that is generally applicable which revises, modifies or reverses the Applicable Rules (individually and collectively, "Amended Rules"), either Party may, by providing written notice to the other Party, require that the affected provisions of this Agreement be renegotiated in good faith and this Agreement shall be amended accordingly to reflect the pricing, terms and conditions of each such Amended Rules relating to any of the provisions in this Agreement.
- 3.3. Notwithstanding any other provision of this Agreement to the contrary §3.2 hereof shall control. Any rates, terms or conditions thus developed or modified shall be substituted in place of those previously in effect and shall be deemed to have been effective under this Agreement as of the effective date established by the Amended Rules, whether such action was commenced before or after the Effective Date of this Agreement. Should the Parties be unable to reach agreement with respect to the applicability of such order or the resulting appropriate modifications to this Agreement, either party may invoke the Dispute Resolution provisions of this Agreement, it being the intent of the parties that this Agreement shall be brought into conformity with the then current obligations under the Act as determined by the amended rules.



John Chuang
Sr. Manager-Local Markets
Wholesale Markets

Local Telecommunications Division
6480 Sprint Parkway
KSOPHM0310-3A464
Overland Park, Kansas 66251
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Via Overnight Mail

July 3, 2003

Mike Gallagher
CEO
Florida Digital Networks, Inc.
390 North Orange Ave, Ste. 2000
Orlando, FL 32801

Re: Florida Rate Amendment to Interconnection and Resale Agreement

Dear Mr. Gallagher:

We are in receipt of your letter dated June 20, 2003 in which FDN disputes the legality of the new rates ordered by the Florida Public Service Commission order at Docket No 990649B-TP, Order No. PSC-03-0058-FOF-TP ("Order"). It is Sprint's position, however, that this dispute does not relieve FDN of its obligation under the Interconnection and Resale Agreement ("Agreement") to negotiate in good faith to amend the Agreement to reflect the pricing and terms of the Order.

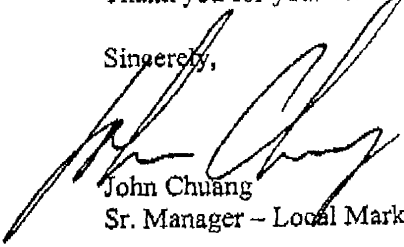
Part B, Section 3.2 of the Agreement states:

"In the event of any amendment of the Act, any effective legislative action or any effective regulatory or judicial order, rule, regulation, arbitration award, dispute resolution procedures under this Agreement or other legal action purporting to apply the provisions of the Act to the Parties or in which the court, FCC or the Commission makes a generic determination that is generally applicable which revises, modifies or reverses the Applicable Rules (individually and collectively, "Amended Rules"), either Party may, by providing written notice to the other Party, require that the affected provisions of this Agreement be renegotiated in good faith and this Agreement shall be amended accordingly to reflect the pricing, terms and conditions of each such Amended Rules relating to any of the provisions in this Agreement."

We believe that it is clear that the Order falls under the definition of an Amended Rule covered by Section 3.2 and any action by FDN to delay or avoid execution of an amendment appears as bad faith negotiations. Accordingly, Sprint will take appropriate action allowed under the Agreement.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,



John Chuang
Sr. Manager - Local Markets

WARNING:

Changes in appearance and in display of formulas, tables, and text may have occurred during translation of this document into an electronic medium. This HTML document may not be an accurate version of the official document and should not be relied on.

For an official paper copy, contact the Florida Public Service Commission at contact@psc.state.fl.us or call (850) 413-6770. There may be a charge for the copy.

State of Florida

Public Service Commission

NEWS RELEASE

December 2, 2002 Contact: Kevin Bloom or Thelma Crump 850-413-6526

PSC SETS WHOLESAL RATES FOR SPRINT

TALLAHASSEE -- Rates Sprint may charge competing telecommunications companies to lease parts of its network were approved by the Florida Public Service Commission today, culminating an initiative launched in 1999 to establish wholesale rates for the state's largest incumbent local telephone companies.

"This has been a long, technical process that has required us to balance a number of competing interests," Commission Chairman Lila Jaber said. "Now that rates have been set for Sprint, the ultimate result will be greater opportunities for competition throughout Florida."

The Commission approved unbundled network element (UNE) rates for BellSouth in September and for Verizon in October.

The separate elements that make up the telecommunications network of an incumbent carrier such as Sprint are referred to as UNEs. Under the provisions of the federal Telecommunications Act of 1996, state commissions are required to set the wholesale rates an incumbent may charge a competing carrier to lease those UNEs.

Based on the Commission's decision today, for example, a competitive telecommunications company could lease from Sprint a two-wire analog voice grade loop in the most densely populated areas of Sprint's territory for \$10.82 a month. Sprint sought a rate of \$18.58 a month. A loop can be thought of as the connection between a consumer's home and a

EXHIBIT 3

telephone company's central office.

The UNE rates set by the Commission for BellSouth, Sprint and Verizon are default rates, meaning that companies are free to negotiate different rates that suit their mutual interests.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by U. S. Mail this 8th day of September, 2003.

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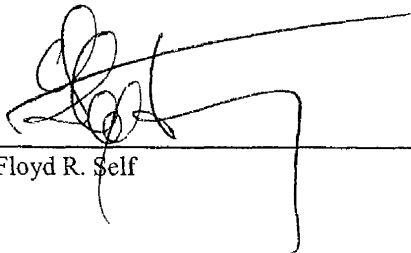
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