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July 30, 2004

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Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 031047-TP


Dear Ms. Bayó:

Enclosed for filing on behalf of KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC are an original and fifteen copies of KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC's Prehearing Statement in the above referenced docket.

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

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of Petition of KMC Telecom)
III LLC, KMC Telecom V, Inc., and KMC)
Data LLC for Arbitration of an Interconnection) Docket No. 031047-TP
Agreement with Sprint-Florida, Incorporated) Filed: July 30, 2004
Pursuant to Section 252(b) of the Communications)
Act of 1934, as Amended)
_____)

**KMC TELECOM III LLC, KMC TELECOM V, INC., AND KMC DATA LLC'S
PREHEARING STATEMENT**

KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC (collectively "KMC") hereby files its prehearing statement pursuant to Rule 25-22.038(3), Florida Administrative Code, and Order Establishing Procedure, Order No. PSC-04-0563-PCO-TP (issued June 1, 2004).

- | 1. <u>WITNESSES</u> | <u>ISSUES</u> |
|---|-----------------------|
| Timothy G. Gates
(Direct and Rebuttal) | 2, 14, 15 |
| Robert E. Collins, Jr.
(Direct and Rebuttal) | 1, 14, 15, 17, 18, 23 |
-
- | 2. <u>EXHIBITS</u> |
|---|
| TJG-1 (Qualifications of Timothy J. Gates) |
| TJG-2 (Circuit Switched Wireline and VoIP Revenue) |
| REC-1 (North Carolina Recommended Order, Pages 75-78) |

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While additional Exhibits have yet to be identified, KMC anticipates marking as exhibits some or all of the following:

- The orders, notices, and other documents cited or referenced in the pre-filed testimony.
- The discovery requests and responses thereto, including those that have yet to be propounded or produced.
- Performance measurement results.
- BellSouth SEEM Plan

3. **BASIC POSITION**

KMC and Sprint have attempted in good faith to negotiate a mutually acceptable interconnection agreement. While the parties have resolved a significant number of issues, seven issues remain in dispute. These issues remain open because they are critical to KMC's ability to compete in the Florida telecommunications market. Three of these open issues (issue nos. 2, 14, and 15) relate to interconnection and compensation. Two issues (issue nos. 18 and 23) concern collocation. The remaining two issues focus on performance measurements and security deposits.

As more fully explained below, this Commission's prior decisions specifically permit the competitive local exchange carriers ("CLECs"), not the incumbent local exchange carriers ("ILECs"), to designate the point of interconnection ("POI") on the ILECs' network. Allowing Sprint to establish its own transport facilities to deliver traffic to KMC's network contravenes the Commission's one-POI-per-LATA rule. In addition, Sprint should pay the cost of transporting Sprint-originated calls, including ISP-bound calls, to the KMC-designated POI. Indeed, state and federal rules specifically preclude the originating carrier from charging the terminating carrier for the costs associated with originating traffic. Likewise, the Commission

should defer addressing the treatment of VoIP traffic until the Federal Communications Commission (“FCC”) has concluded its VoIP rulemaking proceedings. In the interim, bill-and-keep should apply to VoIP calls to the extent they can even be identified. Currently, KMC does not, to its knowledge, exchange any VoIP traffic with Sprint in Florida and does not provide any VoIP services in Florida or elsewhere.

With respect to collocation, this Commission should require Sprint to permit KMC to sublease a portion of its unused cageless collocation space. Where KMC has leased the minimum space for its equipment, but there is unused space after installation, it is inefficient and anticompetitive to prohibit use of that vacant space, for which KMC is compensating Sprint, by a third-party CLEC. In addition, Sprint’s prohibition limits KMC’s options with regard to accessing the facilities of third party service provider alternatives within Sprint’s collocation space. Likewise, KMC should be allowed to utilize spare capacity on existing interconnectors’ entrance facilities, as long as it is technically feasible. A contrary result will encourage Sprint to impose unnecessary collocation costs on KMC.

Effective self-executing performance measures, standards, and remedies are critical to maintaining robust competition in local telecommunications markets. Such performance measures, standards, and remedies ensure that CLECs are treated fairly and that they are able to compete effectively with the incumbents. Accordingly, Sprint should be subject to the same performance measures to which BellSouth is subject since, like BellSouth, Sprint is an ILEC subject to the same sections 251 and 252 obligations which the measures, standards, and remedies are designed to apply, and has a significant presence in the state.

Finally, KMC and Sprint should be subject to reciprocal security deposit requirements. KMC and Sprint are similarly situated for this purpose and both need a

mechanism to mitigate the adverse consequences resulting from the other party's failure to pay for services rendered.

4. **QUESTION OF FACT**

KMC anticipates that the following questions of fact will be raised. KMC reserves the right to supplement this list as additional information is disclosed through discovery.

- The quality, timeliness and overall sufficiency of Sprint's performance in areas of Pre-Ordering, Ordering, Provisioning, Maintenance & Repair and Billing (*see* issue no. 17).
- The technical feasibility of shared cageless collocation (*see* issue no. 18).
- The technical feasibility of utilizing existing entrance facilities (*see* issue no. 23).

5. and 6. **STATEMENT OF EACH QUESTION OF LAW AND POLICY AT ISSUE AND KMC'S POSITION ON EACH SUCH ISSUE**

Issue No. 1: Should the provisions of the interconnection agreement regarding security deposits apply to both parties?

KMC's Position: The security deposit provisions in the interconnection agreement should apply equally to KMC and Sprint. KMC, like Sprint, needs a mechanism to ensure that it is reasonably assured of payment from Sprint for any services rendered by KMC.

(Witness: Collins)

Issue No. 2: How should the parties identify, exchange and compensate traffic transported in whole or in part over internet protocol?

KMC's Position: The Commission should follow its own precedent and defer addressing the treatment of VoIP traffic until the FCC's Intercarrier Compensation

rulemakings are resolved. (*Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92) and *IP-Enabled Services* (*IP-Enabled Services*, WC Docket No. 04-36, FCC 04-28) Until the proper regulatory classification and treatment of VoIP is determined, bill-and-keep should apply to VoIP calls (to the extent they can be identified). The FCC has wisely stated its intention to avoid definitive pronouncements as to the regulatory status of IP telephony absent a complete record from the *IP-Enabled Services NPRM*, and KMC advocates a similarly judicious approach here. The Commission should reject Sprint's attempt to imprudently impose an outdated and inappropriate compensation regime on IP-enabled services. (Witness: Gates)

Issue No. 14: Under what conditions, if any, may Sprint establish its own transport facilities for the delivery of Sprint-originated traffic?

KMC's Position: Consistent with this Commission's prior decisions, KMC has the sole discretion under the Communications Act and the FCC's rules to designate the POI between KMC and Sprint, and KMC is required to establish only one POI per LATA. In addition, Sprint's proposed requirement that it be allowed to establish its own transport facilities to deliver traffic to points on KMC's network—in essence allowing Sprint to deliver its originating traffic to points other than the POI identified by KMC—is inconsistent with the one-POI-per-LATA rule. (Witnesses: Gates and Collins)

Issue No. 15: What are the requirements for interconnection and compensation for the transport of Sprint end user originated ISP-bound traffic between Sprint's originating local calling area and a Point of Interconnection (POI) outside Sprint's local calling area?

KMC's Position: Sprint should pay the cost of transporting Sprint-originated calls, including ISP-bound calls, to the KMC-designated POI. This is consistent with FCC rules and Commission precedent which holds that an originating carrier may not charge a

terminating carrier for the cost of transport, or for the facilities used to transport, its originating traffic. ISP-bound traffic is subject to section 51.703(b) of the FCC's rules, and is not exempt information access traffic, as determined by the U.S. Court of Appeals for the D.C. Circuit in vacating the FCC's reasoning in the *ISP Remand Order* that ISP-bound traffic is section 251(g) traffic. (Witnesses: Gates and Collins)

Issue No. 17: What measures, standards and remedies, if any, should apply to Sprint's performance?

KMC's Position: Sprint should be subject to the same measures and, in particular, the same type of performance assurance plan to which BellSouth is subject. Since both Sprint and BellSouth are incumbent local exchange carriers with have very large, significant service territories in the state, and both face the same section 251 and 252 obligations, they should both have self-executing remedy plans. The fact that BellSouth also is subject to obligations under sections 271 and 272 of the Communications Act is not a material difference because the substantive obligations with which the performance assurance plan of BellSouth is associated fall under sections 251 and 251 of the Communications Act. Given Sprint's unsatisfactory performance in critical areas, and its dual role as both competitor and wholesaler in the same markets, it must be subject to effective, self-executing mechanisms in order to incent satisfactory performance vis-à-vis its competitors. (Witness: Collins)

Issue No 18: Under what conditions, if any, should Sprint be required to provide shared cageless collocation space?

KMC's Position: KMC should be allowed to sublease a portion of its cageless collocation arrangement in instances where it has unused space available. This is consistent with the policy underlying the FCC's collocation rules that the ILECs should not be permitted or encouraged to foist unnecessary costs upon CLECs. Allowing shared cageless

collocation where there is unused space, especially where the CLEC with the unused space has leased the minimum amount of collocation space required by the ILEC for collocation, is not only economical, but also reduces the likelihood of premature space exhaustion. (Witness: Collins)

Issue No. 23: Under what conditions, if any, may KMC utilize spare capacity on an existing interconnector's entrance facility for the purpose of providing an entrance facility to its collocation arrangement?

KMC's Position: KMC should be allowed to utilize spare capacity on an existing interconnector's entrance facility for the purpose of connecting to its collocation arrangement, as long as it is technically feasible. Sound public policy requires this result because it simply does not make sense to force KMC to incur the significant costs of deploying parallel entrance facilities when its collocation needs can be fully addressed by leasing spare capacity on already existing entrance facilities, and no significant additional work will be required to share the facility as opposed to employing a co-carrier cross-connect. (Witness: Collins)

7. **STIPULATED ISSUES**

The parties have resolved through negotiations to close issues 3-13, 16 and 19-22.

8. **PENDING MOTIONS**

None.

9. **PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY**

None.

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10. **REQUIREMENTS THAT CANNOT BE COMPLIED WITH**

None. As noted above, KMC reserves the right to supplement item no. 2 above, as additional Exhibits are identified.

Respectfully submitted this the 30th day of July, 2004

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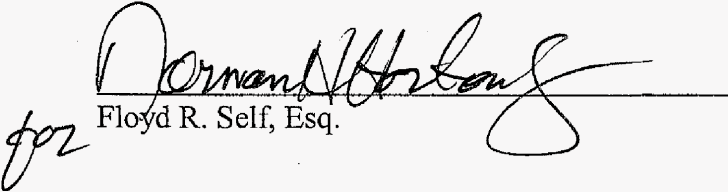
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **KMC TELECOM III LLC, KMC TELECOM V, INC., AND KMC DATA LLC'S PREHEARING STATEMENT**, by first class U.S. mail, postage prepaid, upon the following individuals:

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