

ORIGINAL

LAW OFFICES
Messer, Caparello & Self

A Professional Association

Post Office Box 1876
Tallahassee, Florida 32302-1876
Internet: www.lawfla.com

August 23, 2004

RECEIVED 11:30
04 AUG 23 PM 2:49
COMMISSION
CLERK

BY HAND DELIVERY

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

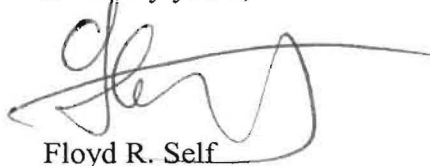
Dear Ms. Bayó:

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's Objections to Staff of the Florida Public Service Commission's Third Set of Interrogatories 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

- CMP _____
- COM _____
- CTR _____
- ECR _____ FRS/amb
- GCL _____ Enclosures
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH _____

RECEIVED & FILED



SC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
09193 AUG 23 2004

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)
Pursuant to 47 U.S.C. Section 252(b) of the)
Communications Act of 1934, as Amended.)

**KMC TELECOM III LLC, KMC TELECOM V, INC., AND KMC DATA LLC's
OBJECTIONS TO STAFF OF THE FLORIDA PUBLIC SERVICE COMMISSION'S
THIRD SET OF INTERROGATORIES**

KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC
(collectively, "KMC"), by and through their undersigned counsel, hereby submit their objections
to Staff of the Florida Public Service Commission's ("Staff") Third Set of Interrogatories (the
"Interrogatories").

GENERAL OBJECTIONS

A. KMC objects to Staff's Interrogatories and all Instructions and Definitions
associated with those Interrogatories to the extent they purport to impose obligations that are
different from, or go beyond, the obligations imposed under Rules 1.280 and 1.340 of the Florida
Rules of Civil Procedures, and the Commission's *Order Establishing Procedure*.

B. KMC objects to the Interrogatories and all Instructions and Definitions
associated with those Interrogatories to the extent they seek information outside the scope of the
issues raised in this arbitration proceeding, and to the extent their principal purpose appears to be
to harass KMC and unnecessarily impose costs on KMC.

C. KMC objects to the Interrogatories and all Instructions and Definitions associated with those Interrogatories to the extent they seek documents or information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, attorney work-product doctrine, or other applicable privileges or doctrines.

D. KMC objects to each Interrogatory to the extent that it is vague and ambiguous, particularly to the extent that it uses terms that are undefined or vaguely defined in the Discovery Request.

E. KMC objects to the Interrogatories and all Instructions and Definitions associated with those Interrogatories to the extent they seek confidential business, financial, or other proprietary documents or information. KMC further objects to the Interrogatories to the extent they seek documents or information protected by the privacy protections of the Florida or United States Constitution, or any other law, statute, or doctrine. Any confidential or proprietary documents KMC produces are produced subject to the terms of the Protective Order in this proceeding.

F. KMC objects to the Interrogatories to the extent they seek documents or information equally available to Staff through public sources or records, because such requests subject KMC to unreasonable and undue annoyance, oppression, burden, and expense.

G. The responses provided herein by KMC are not intended, and shall not in any way be construed, to constitute an admission or representation that responsive documents in fact do or do not exist, or that any such documents are relevant or admissible. KMC expressly reserves the right to rely, at any time, on subsequently discovered documents.

H. To the extent KMC responds to Staff's Interrogatories, KMC reserves the right to amend, replace, supersede, and/or supplement its responses as may become appropriate in the future.

I. KMC objects to the Interrogatories and all Instructions and Definitions associated with those Interrogatories to the extent that they seek to impose an obligation on KMC to respond on behalf of subsidiaries, affiliates, or other persons that are not subject to the jurisdiction of this Commission on the grounds that such discovery is overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules.

J. KMC has interpreted the Interrogatories to apply to KMC's regulated intrastate operations in Florida and will limit its responses accordingly. To the extent that any Interrogatories or any Instructions and Definitions associated with those Interrogatories are intended to apply to matters that take place outside the state of Florida and which are not related to Florida intrastate operations subject to the jurisdiction of this Commission, KMC objects to such Interrogatories as irrelevant, overly broad, unduly burdensome, and oppressive.

K. KMC objects to the Interrogatories to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence and not relevant to the subject matter of this arbitration proceeding.

L. KMC objects to the Interrogatories to the extent they are duplicative and overlapping, cumulative of one another, overly broad, and/or seek responses in a manner that is unduly burdensome, expensive, oppressive, or excessively time-consuming to KMC.

M. KMC is a large corporation with employees located in many different locations in Florida and with affiliates that have employees who are located in various states providing services on KMC's behalf. In the course of its business, KMC creates countless

documents that are not subject to retention of records requirements of the Commission or the Federal Communications Commission (“FCC”). These documents are kept in numerous locations and are frequently moved from site to site as employees change jobs or a KMC business is reorganized. Therefore, it is possible that not every document will be identified in response to Staff’s Interrogatories. KMC will conduct a reasonable and diligent search of those files that are reasonably expected to contain the requested information. To the extent that the Interrogatories or all Instructions and Definitions associated with those Interrogatories purport to require more, KMC objects on the grounds that compliance would impose an undue burden or expense on KMC.

N. KMC objects to the Interrogatories and all Instructions and Definitions associated with those Interrogatories to the extent they seek to obtain “all,” “each,” or “every” document, item, customer, or such other piece of information because such discovery is overly broad and unduly burdensome.

O. KMC objects to the Interrogatories and all Instructions and Definitions associated with those Interrogatories to the extent they seek to have KMC create documents not in existence at the time of the Interrogatories because such discovery is overly broad and unduly burdensome.

P. KMC objects to the Interrogatories and all Instructions and Definitions associated with those Interrogatories to the extent they are not limited to any stated period of time or a stated period of time that is longer than is relevant for purposes of the issues in this proceeding, as such discovery is overly broad and unduly burdensome.

Q. KMC objects to each and every Interrogatory that seeks information regarding KMC’s projections regarding future services, revenues, marketing strategies,

equipment deployments, or other such future business plans as such Interrogatories seek trade secrets and, for purposes of this proceeding, would be highly speculative and irrelevant to the issues involved in this proceeding.

R. KMC objects to the definition of “document” to the extent it seeks to impose an obligation that is greater than that imposed by Rules 1.280 and 1.340 of the Florida Rules of Civil Procedure, and the Commission’s *Order Establishing Procedure*, and to the extent that it would pose an unreasonable and undue annoyance, burden, and expense on KMC. KMC’s objection includes, but is not limited to, the definition of “document” to the extent it calls for the production of information which was not generated in the form of a written or printed record, on the grounds that it would be unduly burdensome and expensive to require KMC to search through computer records or other means of electronic or magnetic data storage or compilation.

SPECIFIC OBJECTIONS

29. Does KMC’s current Florida interconnection agreement with Sprint provide for reciprocal deposits?

OBJECTION: KMC incorporates its general objections as though more fully set forth herein. KMC specifically objects to this interrogatory because it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and not relevant to the subject matter of this arbitration proceeding. In particular, the absence or presence of a reciprocal deposit requirement in the parties’ Florida interconnection agreement is not dispositive of the deposit dispute in this proceeding. Subject to and without waiving its objections, however, KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

30.a. In Florida, does Sprint currently hold a deposit from KMC?

OBJECTION: KMC incorporates its general objections as though more fully set forth herein. KMC specifically objects to this interrogatory because it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and not relevant to the subject matter of this arbitration proceeding. In particular, the question of whether Sprint holds or does not hold a deposit from KMC is not dispositive of the deposit dispute in this proceeding. Subject to and without waiving its objections, however, KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

30.b. If yes, how long has Sprint held the deposit?

OBJECTION: KMC incorporates its general objections as though more fully set forth herein. KMC specifically objects to this interrogatory because it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and not relevant to the subject matter of this arbitration proceeding. In particular, the question of whether Sprint holds or does not hold a deposit from KMC, and how long that deposit has been held by Sprint, is not dispositive of the deposit dispute in this proceeding. Subject to and without waiving its objections, however, KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

31. How does holding a deposit ensure that KMC is assured payments from Sprint?

OBJECTION: KMC incorporates its general objections as though more fully set forth herein. Subject to and without waiving its objections, however, KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

32. Since 2000 has KMC received notices from Sprint for late payment of Florida bills for services? If your response is affirmative, when have such notices been received?

OBJECTION: KMC incorporates its general objections as though more fully set forth herein. KMC specifically objects to this interrogatory because it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and not relevant to the subject matter of this arbitration proceeding. In particular, the question of whether KMC has received notices from Sprint for late payments is not dispositive of the deposit dispute in this proceeding. Subject to and without waiving its objections, however, KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

33. Does KMC believe its risk is comparable to Sprint's for receiving future payments? If so, please explain.

OBJECTION: None. KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

34. In Florida, what services does Sprint purchase from KMC?

OBJECTION: KMC incorporates its general objections as though more fully set forth herein. KMC specifically objects to this interrogatory because it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and not relevant to the subject matter of this arbitration proceeding. In particular, the nature of the services that Sprint purchases from KMC is not dispositive of the deposit dispute in this proceeding. Subject to and without waiving its objections, however, KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

35. In Florida, what is the average Sprint bill from KMC for the past 12 months?

OBJECTION: KMC incorporates its general objections as though more fully set forth herein. KMC specifically objects to this interrogatory because it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and not relevant to the subject matter of this arbitration proceeding. In particular, the average amount billed by KMC to Sprint for the past 12 months is not dispositive of the deposit dispute in this proceeding. Subject to and without waiving its objections, however, KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

36. In Florida, what is the average KMC bill from Sprint for the past 12 months?

OBJECTION: KMC incorporates its general objections as though more fully set forth herein. KMC specifically objects to this interrogatory because it seeks information that is

not reasonably calculated to lead to the discovery of admissible evidence and not relevant to the subject matter of this arbitration proceeding. In particular, the average amount billed by Sprint to KMC for the past 12 months is not dispositive of the deposit dispute in this proceeding. Subject to and without waiving its objections, however, KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

37. In KMC witness Collins' rebuttal testimony on page 11 he states, "...KMC must order a minimum of one rack space for a cageless collocation. This is the case regardless of whether KMC needs the entire rack or, say, just the first five rack elevations." Please define "rack space".

OBJECTION: None. KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

38. Please define the following terms:

(a) rack.

OBJECTION: None. KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

(b) bay.

OBJECTION: None. KMC will provide a response to this interrogatory.

RESPONDENT:

(c) rack elevation.

OBJECTION: None. KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

39. Does KMC agree that 47CFR 51.323 (k) does not require an ILEC to provide shared cageless collocation? If your response is negative, please explain.

OBJECTION: None. KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

40. FPSC Order PSC-00-0941-FOF-TP provides that a CLEC can lease appropriate space for its collocation needs plus 18 months of anticipated growth from an ILEC. Does having space set aside for sharing purposes comply with this order? Please explain your response.

OBJECTION: None. KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

41. If KMC finds that it has leased excess collocation space, what would prevent KMC from giving the excess space back to the ILEC?

OBJECTION: None. KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

42. On Page 11 of his direct testimony, witness Collins states, “Precluding CLECs, such as KMC, from subleasing unused cageless collocation space, such as a portion of a rack, would be a waste of valuable collocation space, perhaps contributing to eventual space exhaust.” Is KMC wanting to share a bay with another CLEC? Please explain your response.

OBJECTION: None. KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

43. 47CFR 51.323 (b) refers to permitting the collocation of equipment that is necessary for interconnection or access to unbundled network elements of the ILEC. Does sharing cageless space with another CLEC in order to cross connect with that CLEC meet this requirement? Please explain your response.

OBJECTION: None. KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

44. For each of the following Sprint Central office, how many bays does KMC currently lease and how many of the leased bays in each central office are currently in use?

Ft. Myers:

- (a) 1520 Lee Street
- (b) 3825 South Cleveland Avenue

Tallahassee:


- (c) 132 North Calhoun
- (d) 124 Willis Road
- (e) 319 Blair Stone Road

OBJECTION: KMC incorporates its general objections as though more fully set forth herein. KMC specifically objects to this interrogatory because it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and not relevant to the subject matter of this arbitration proceeding. In particular, the number of bays that KMC currently leases from Sprint and the number of collocation bays that are currently in use are not dispositive of the collocation dispute in this proceeding. Subject to and without waiving its objections, however, KMC will provide a response to this interrogatory.

RESPONDENT: Counsel of record.

Submitted this 23rd day of August, 2004.

By:



Floyd R. Self, Esq.
MESSER, CAPARELLO & SELF, P.A.
215 South Monroe Street, Suite 701
Tallahassee, Florida 32301
(850) 222-0720 (voice)
(850) 224-4359 (facsimile)
fself@lawfla.com

Edward A. Yorkgitis, Jr.
Enrico C. Soriano
Andrew M. Klein
Andrea Pruitt Edmonds
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W., Fifth Floor
Washington, D.C. 20036
(202) 955-9600 (voice)
(202) 955-9792 (facsimile)
cyorkgitis@kelleydrye.com
esoriano@kelleydrye.com
aklein@kelleydrye.com
aedmonds@kelleydrye.com

Marva Brown Johnson
KMC Telecom Holdings, Inc.
1755 North Brown Road
Lawrenceville, GA 30043
(678) 985-6220 (voice)
(678) 985-6213 (facsimile)
marva.johnson@kmctelecom.com

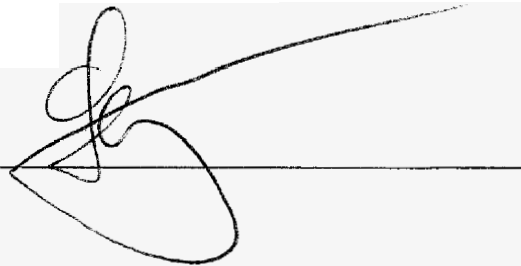
CERTIFICATE OF SERVICE

I, Floyd Self, do hereby certify that I have this 23rd day of August 2004, served a copy of the foregoing **KMC TELECOM III LLC, KMC TELECOM V, INC., AND KMC DATA LLC'S OBJECTIONS TO STAFF OF THE FLORIDA PUBLIC SERVICE COMMISSION'S THIRD SET OF INTERROGATORIES**, by e-mail (*) and/or first class U.S. mail, postage prepaid, upon the following individuals:

Lee Fordham*
Staff Counsel
Florida Public Service Commission
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Susan S. Masterton*
P.O. Box 2214
Tallahassee, FL 32316-2214
Voice: 850-599-1560
Fax: 850-878-0777 (fax)
susan.masterton@mail.sprint.com

Janette Luehring, Esq.
Sprint
6450 Sprint Parkway
KSOPHN0212-2A511
Overland Park, KS 66251

A handwritten signature in black ink, appearing to be "J. Luehring", is written over a horizontal line. The signature is stylized and cursive. The background behind the signature is a light gray rectangular area.