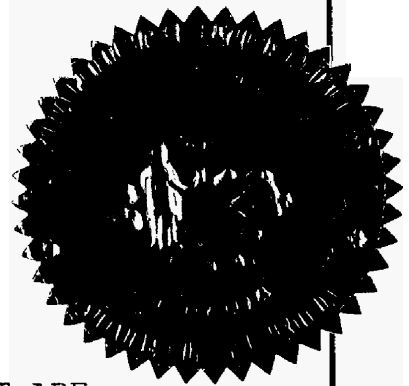


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 031047-TP

In the Matter of

PETITION OF KMC TELECOM III LLC,
KMC TELECOM V, INC., AND KMC DATA
LLC FOR ARBITRATION OF INTERCONNECTION
AGREEMENT WITH SPRINT-FLORIDA,
INCORPORATED.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: CHARLES M. DAVIDSON
 Prehearing Officer

DATE: Monday, August 30, 2004

TIME: Commenced at 9:37 a.m.
 Concluded at 10:12 a.m.

PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR
 Official FPSC Reporter
 (850) 413-6734

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1 APPEARANCES:

2 FLOYD R. SELF, ESQUIRE, Messer Law Firm, 150 South
3 Monroe Street, Suite 701, Tallahassee, Florida 32301, appearing
4 on behalf of KMC Data LLC, KMC Telecom III LLC and KMC Telecom
5 V, Inc.

6 SUSAN MASTERTON, ESQUIRE, Post Office Box 2214,
7 313 Blainstone Road, Tallahassee, Florida 32316, appearing on
8 behalf of Sprint-Florida, Incorporated.

9 LEE FORDHAM, ESQUIRE, Florida Public Service
10 Commission, General Counsel's Office, 2540 Shumard Oak
11 Boulevard, Tallahassee, Florida 32399, appearing on behalf of
12 he Commission Staff.

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1 P R O C E E D I N G S

2 COMMISSIONER DAVIDSON: Good morning. Call this
3 hearing to order.

4 Read the notice, please.

5 MR. FORDHAM: Thank you. Pursuant to notice
6 published July 30, 2004, this time and place has been set for a
7 prehearing conference in Docket Number 031047-TP for the
8 purposes set forth in the notice.

9 COMMISSIONER DAVIDSON: Take appearances, please.

10 MS. MASTERTON: Susan Masterton representing Sprint.

11 MR. SELF: Floyd Self representing KMC.

12 MR. FORDHAM: And Lee Fordham representing the
13 Commission.

14 COMMISSIONER DAVIDSON: Thank you. Staff,
15 preliminary matters.

16 MR. FORDHAM: Commissioner, there is a matter the
17 parties would like to discuss which may impact the items that
18 we had previously thought would be preliminary matters, and I
19 don't know if it would be Mr. Floyd (sic.) or Ms. Masterton who
20 would present this.

21 MS. MASTERTON: Mr. Self's going to present it.

22 MR. SELF: Thank you, Lee.

23 Commissioner Davidson, as you well know, KMC and
24 Sprint have continued over the time since this arbitration was
25 filed, a couple of hundred years ago it seems, to negotiate and

1 attempt to resolve issues. On Friday, Thursday and Friday of
2 last week the parties were able to come to a resolution to all
3 of the outstanding issues in the docket except for the VOIP
4 issue. And --

5 COMMISSIONER DAVIDSON: I thought that would have
6 been settled first. That's such an easy one.

7 MR. SELF: Well, we wanted to save the fun for you.
8 But in lieu of the resolution of, of those issues and in
9 talking with Ms. Masterton from Sprint, what we've come up with
10 is a proposal for how the Commission should deal with the
11 outstanding VOIP issue. And what we would propose is that at
12 the September 22nd hearing or such other time as the Commission
13 may designate, that Sprint and KMC would stipulate into the
14 record any testimony and discovery related to the VOIP issue,
15 the parties and the Commission would waive cross on that and
16 the hearing would be concluded. And then approximately a month
17 later KMC and Sprint would submit their respective posthearing
18 briefs on the VOIP issue. And then approximately a month after
19 the briefs the Commission would conduct an oral argument
20 whereby the parties might make a five-minute presentation, but
21 basically open themselves up to questions that the
22 Commissioners or staff may have with respect to the VOIP issue.

23 The VOIP issue, as you well know, is, is a both legal
24 and policy type question. I don't think there's a whole lot of
25 factual dispute associated with it. And we thought that given

1 the changing dynamics of what's going on out there, that it
2 might be best, after the submission of those briefs, that
3 probably the Commissioners and staff might have questions for
4 the parties and, therefore, it might be appropriate to have an
5 oral argument. But really it's -- I think of it more as sort
6 of a give and take, but the opportunity for the Commissioners
7 and staff to kind of probe the positions of the parties and,
8 and the argument and analysis that they have on that legal and
9 policy question.

10 COMMISSIONER DAVIDSON: Who -- let me interrupt here
11 for a minute. On the VOIP issue, that's currently only
12 addressed in the -- do y'all have the draft prehearing order?

13 MR. SELF: Yes, sir.

14 COMMISSIONER DAVIDSON: It's currently only addressed
15 at Issue 2; is that correct?

16 MR. SELF: I think that's correct. I've been out of
17 town and haven't had a chance to actually circle back with KMC
18 and get their confirmation. But in talking with Ms. Masterton
19 this morning, it appears that that is the only issue.

20 COMMISSIONER DAVIDSON: Who drafted this draft
21 statement of Issue 2?

22 MR. FORDHAM: Commissioner, those issues were done in
23 a consensus basis in an issue identification where the parties
24 agreed on the wording of the issue.

25 COMMISSIONER DAVIDSON: I'll tell you, I'm, I'm a

1 little bit troubled by it because it's sort of a broad, just
2 general issue. And just without sort of prejudging the merits,
3 and, and we're going to get submissions from the parties, it
4 seems to me that nuances have to be made.

5 Just as a theoretical matter, if there are
6 distinctions to be made -- and I think these distinctions
7 impact both how the case is prepared, the discovery that's
8 requested and provided, and the decisions that, that may be
9 made by the prehearing officer or the whole Commission. And
10 just some of those distinctions are the argument is
11 theoretically weaker if we're talking about pure VOIP, meaning
12 VOIP that never touches the PSTN. Hypothetically a call that
13 traverses the sort of Internet or the broadband networks
14 completely may be less subject to access fees than obviously a
15 call that touches the PSTN.

16 So as I was thinking about this case, I thought, all
17 right, well -- and, obviously, Sprint might not be here if
18 we're talking about a Vonage call, a Vonage call, a Vonage call
19 originating with a Vonage customer to a Vonage customer that
20 never touches the PSTN. Sprint might not be here; it might be
21 here. But I think -- I would prefer it, if possible, if we
22 could have an issue statement that addresses some, some of the,
23 the nuances. Some of the issues personally I would like to see
24 identified: Are we talking about pure VOIP that never touches
25 the PSTN and to what extent? To what extent are we touching --

1 alking about VOIP that touches Sprint's network? Does it
2 ouch it on the origination, origination side, the termination
3 side or both? To what extent for those calls that touch
4 Sprint's network is KMC either directly or through some
5 hird-party already providing for and paying for the carriage
6 of those calls? And I'm just sort of rambling off a number of
7 ssues here in no particular order.

8 I think it would be also useful to know are we
9 alking about in this case VOIP that is purely transport,
10 eaning are we talking about calls that originate and terminate
11 on the PSTN and the issue is carriage within KMC's network via
12 the IP protocol? So those types of, those types of issues.
13 And I think it's useful to be able to -- for Sprint on the one
14 hand to be able to say, listen, our network is being burdened
15 and we're not being compensated and here's how. And conversely
16 for KMC to say, listen, for this set of calls we're not
17 burdening Sprint's network, or for this set of calls we are
18 burdening the network but we're paying, or for this set of
19 calls, you know what, we're burdening the network and we don't
20 think we should have to pay because of Florida legislation
21 and/or general policy regarding VOIP. And all of those issues
22 will have to be resolved. But factually it's going to be
23 useful to know the, the types of calls we're talking about, the
24 types of transport, when and how the PSTN is touched.

25 So, staff, what's your recommendation on how we can

1 develop that issue statement? I view the prehearing officer as
2 having the, having the discretion to simply modify that. But,
3 again, I would, I would like to, to have an issue statement
4 that makes sense to the parties and staff in terms of
5 addressing the nuances, which this one does not.

6 MR. FORDHAM: Commissioner, perhaps we could set a
7 time certain by which they could submit to us a simplified
8 addendum to that issue and see if it meets with the
9 Commissioners' approval and encompasses those areas wherein
10 we've just identified additional information.

11 I think perhaps ten days or something might be
12 sufficient to --

13 COMMISSIONER DAVIDSON: Please. I'd like the
14 parties' response to --

15 MS. MASTERTON: I just have a question. It's not
16 that I, I have an objection to rephrasing the issue. It's just
17 that all the testimony has already been filed and the discovery
18 deadline is about to expire on the 3rd, and I'm not sure that
19 we necessarily have -- although I think a lot of the issues
20 that you've identified are actually addressed in some form or
21 other in the, in the testimony or the discovery that's
22 currently out there, I'm not sure that we have been able to
23 address them all, given that, you know, that's not how the
24 issue was phrased when we filed the testimony. And I guess
25 that's my only concern with, you know, rephrasing it at this

1 point because we -- I mean, some of it is legal and you can
2 bring in the legal precedent regardless of whether the
3 testimony has been filed. But to the extent it requires
4 factual testimony in the record --

5 COMMISSIONER DAVIDSON: Could we push this out a
6 month? Would that be acceptable to the parties? Because I
7 think it's going to be useful -- I mean, these are going to be
8 the types of issues I will ask at the hearing and I will -- if
9 the information is not there in that order, I'll be frustrated.
10 Which that's not, not to say that that should be relevant to
11 you all, but it's --

12 MS. MASTERTON: No. It is.

13 COMMISSIONER DAVIDSON: But those are the issues
14 really. That's how we need to, I think, proceed on this
15 because this whole sort of VOIP issue is very nuanced. As you
16 know, Florida has a clear policy that VOIP shall be free of
17 unnecessary regulation. Well, what does that mean? The
18 devil's in the details. And there's a specific provision that,
19 however, nothing herein shall limit the rights of carriers to
20 compensation for use of the network, and then that raises sort
21 of the policy issue. Well, do we decide that? Is that decided
22 at the federal level and what's the scope?

23 So we're going to have to try and sort of balance
24 these, these different statements of, of policy, this sort of
25 general we're not going to regulate it with the recognition

1 that network owners are entitled to compensation, and we've got
2 to have a, have a way to do that. So I think being able to
3 address those issues will provide for a more meaningful
4 hearing.

5 I don't want to unduly delay the case, but -- and I
6 don't want to inadvertently cause the parties to go back and
7 have to incur huge amounts, sort of a burden and expense to
8 prepare their case. But it seems to me that KMC would carry
9 the burden of establishing, listen, these calls don't ever
10 touch Sprint's network. If they do, we're paying. And if they
11 do and we're not paying, well, that's a policy argument.

12 There's, there's not a lot of factual testimony that will go
13 into that. You'll have to persuade us with your reasoning that
14 if you're touching Sprint's network and you're not paying, why?

15 Conversely, the burden will be on Sprint to show, you
16 know, listen, this is the scope of calls that are touching our
17 network. We don't know why KMC is calling these calls VOIP
18 calls. Frankly, we don't care. They're touching our network.
19 We're entitled to compensation. And so -- and then Sprint will
20 have areas where they just argue policy.

21 But I would, I would rather, and I know it's tough to
22 find dates, I would rather push it out a little bit without
23 unduly burdening the parties to another date certain and allow
24 this issue to be sort of redrafted. And I think staff would be
25 able to draft this. I see David sitting in the back there. I'm

1 comfortable that David could whip out a revised issue too in a
2 day, if folks left him alone. Right, David?

3 MR. FORDHAM: Obviously, Commissioner, the parties
4 would have to agree, and so perhaps a joint effort of the
5 parties and staff to rephrase the issue.

6 I agree that there would need be some limited
7 additional discovery, and perhaps if we're pushing out the
8 hearing by about a month, about the same amount of extension on
9 discovery. Presently the discovery cutoff is today. If we
10 extended it to, say, September 30, that would allow about the
11 same length of time as we would hopefully be extending the
12 hearing.

13 COMMISSIONER DAVIDSON: And that's fine. And it may
14 be that given that all, all documents that could reasonably
15 lead to the admission of relevant evidence, I can't think of
16 the standard as I sit here, but the parties have presumably
17 produced most everything they have because this general issue
18 encompasses all the subissues that, that we've been talking
19 about and that hopefully will be identified.

20 One part of the exercise may be just to sort of
21 identify the discovery and identify to which of the ultimate
22 subissues it relates. I'm assuming that if there's any other
23 evidence that relates to the particular subissues, that that
24 can be readily produced.

25 One, one additional area of evidence that, that the

1 parties might be able to produce, I just don't know, would be
2 the, sort of any internal, sort of internal tabulations of the
3 nature of the calls and the nature of the transport and whether
4 it's PSTN, IP protocol, where the calls originate, terminate
5 and how they touch Sprint's network. And perhaps that will
6 just come from additional sort of limited depositions on the
7 issues or additional limited testimony on the issues.

8 MR. SELF: Commissioner Davidson, I think if we had
9 ten days or thereabouts, I think the parties could sit down
10 with the staff and come up not only with how the issue should
11 be reworded, but that would give us a chance to see what
12 evidence is already out there that we put in the record. **And I**
13 think we could probably come to some agreement as to what
14 additional evidence, if any, might be necessary to fill in
15 those gaps so that this expanded or revised issue could be
16 adequately addressed in the briefs and the arguments.

17 COMMISSIONER DAVIDSON: Help me -- and that works out
18 perfectly, so I'll leave it to staff and the parties to, to
19 work this, work this out. And, Ms. Keating, I see you. I
20 think that's you. I don't have my glasses on. If you can also
21 sort of at a certain level just jump in and give an additional
22 set of eyes to the issue statements. **I'm sure Lee and David**
23 and the parties will work something out, but just an additional
24 set of eyes will, will help on that.

25 Before we move on, and I'm not asking the parties to

1 present their cases here, but, Mr. Self, if you can summarize
2 for me, and then Ms. Masterton, sort of what the, the essence
3 of this case is as it relates to VOIP. I, I see the positions
4 and I understand the positions. But what -- to the extent you
5 know and can discuss it, what sort of is the scope of the VOIP
6 that KMC is talking about? What is it that it hopes to
7 achieve? What's its desired outcome?

8 MR. SELF: I have an easy answer to that. I don't
9 know. I, I have not been a party to the discussions that have
10 gone on between Sprint and KMC, so I can't really, I can't
11 articulate at all for you where the differences and, you know,
12 what the nuances of that are.

13 COMMISSIONER DAVIDSON: Ms. Masterton.

14 MS. MASTERTON: I mean, I can say that for Sprint
15 what, what we're looking for is a ruling that, you know, for
16 the exchange of traffic, VOIP traffic between the parties, that
17 if it touches our network, compensation is due to us. And as I
18 understand KMC's position, they're saying that until the FCC
19 rules, the parties should exchange that traffic at
20 bill-and-keep, which means that there would be no payment. So
21 the essence of the dispute is a compensation issue.

22 COMMISSIONER DAVIDSON: Right. Okay. And clearly
23 we're not talking about sort of VOIP traffic that would never
24 touch Sprint's network.

25 MS. MASTERTON: I can -- yes. That's true.

1 COMMISSIONER DAVIDSON: So -- okay. So we're really
2 just talking about calls that would either originate or
3 erminate on the network and perhaps are just transported using
4 VOIP over KMC's network.

5 MS. MASTERTON: Yeah. I mean, as I understand it,
6 hat's true. I mean, the, all the fine nuances of that I'd
7 have to look to my, you know, to my witness to make sure I said
8 hat all correctly. But, yes.

9 COMMISSIONER DAVIDSON: And that's fine, and I'm not
10 holding at all this -- I'm just trying to get some additional
11 background.

12 Mr. Self, are we talking, to the extent you know,
13 about calls that both originate on a traditional telephone line
14 and on a data network, meaning a, a typical phone call that
15 originates from a KMC customer picking up the telephone and
16 dialing, but the VOIP occurs sort of within KMC's IP network,
17 one area, and are we also talking about a -- does KMC have any
18 broadband customers? Because I see KMC Data LLC is a party
19 here, and I'm wondering does KMC have DSL or cable modem
20 customers.

21 MR. SELF: Based upon what I know, I don't think they
22 have cable modem customers. I know they have customers that
23 are receiving Internet access through, for example, T-1s, you
24 know, partition T-1s, that sort of thing.

25 COMMISSIONER DAVIDSON: Well, would any of these

1 calls originate on, originate on sort of a broadband or
2 T-1 network? I don't know if, if that occurs. Or are the
3 calls we're talking about just your traditional telephone
4 calls?

5 MR. SELF: To the best of my knowledge, and I'd need
6 to check, they're originating on KMC facilities.

7 COMMISSIONER DAVIDSON: Circuit switched networks.

8 MR. SELF: Well, they may be circuit switched or it
9 may be originating on some of those, some of the Internet or
10 some of the broadband facilities that it has from the customer
11 --

12 COMMISSIONER DAVIDSON: Okay.

13 MR. SELF: -- to the switch.

14 COMMISSIONER DAVIDSON: Okay. That -- I mean, that
15 would be useful to know also. And to the extent, and this
16 would go into the briefs, to the extent the parties can
17 analogize, not necessarily pigeonhole, but rely upon the FCC's
18 Pulver order and AT&T order, that would be helpful. And those
19 are two completely different scenarios.

20 The AT&T order is an order which talks about how VOIP
21 purely as transport will be -- should be treated when there is
22 no sort of enhanced functionality, no, no unique CPE. And the
23 Pulver order is, is sort of the completely unregulated space
24 where you've got pure VOIP. So to the extent those, the
25 existing precedents provide any guidance, that would be, that

1 would be useful to have in there. And perhaps that can somehow
2 be worked into the, an issue statement: How should, how should
3 this be resolved in light of existing FCC precedent? Let the
4 parties submit short position statements on Pulver doesn't
5 apply, AT&T doesn't apply or it does apply.

6 So, staff, you will work with the Chairman's office
7 and my office on a hearing date.

8 MR. FORDHAM: Correct.

9 COMMISSIONER DAVIDSON: Trying to push this out about
10 a month, give or take. Discovery will be extended by the same
11 amount.

12 MR. FORDHAM: Correct. With the Commissioners'
13 approval, I'll coordinate all the new dates and then those
14 could be reduced to an order modifying the original prehearing
15 order.

16 COMMISSIONER DAVIDSON: And I would suggest in terms
17 of the redrafted Issue 2 that, Mr. Dowds, if you can go ahead
18 and just sort of work up a draft, run it by my office so that
19 it passes the initial pass/fail test. And if precedent serves
20 as any guide, it will pass with flying colors. But -- and then
21 sort of work that, work with Mr. Fordham and Ms. Keating and
22 the parties to see where they, where they stand on that.

23 MR. SELF: And, Commissioner Davidson, with respect
24 to the rescheduled hearing date, the purpose of that would be
25 just to get the record stipulated. So that would be 20, 30

1 minutes, I would imagine. And then the oral argument could be
2 at a regularly scheduled agenda conference, it could be a
3 special agenda conference before or after an agenda or before
4 or after an internal affairs, whatever worked for the
5 Commission.

6 COMMISSIONER DAVIDSON: Well, and staff has noted
7 here, and that's, that's fine, I'll leave it to staff to come
8 up with a recommendation, but staff has noted that since we
9 won't be having actual witness summaries -- it would just be
10 oral argument, I take it, sort of a statement of positions or
11 --

12 MS. MASTERTON: Well, I think what Floyd and I had
13 discussed was not -- at the hearing itself just stipulating the
14 record, and then filing the briefs and then having the oral
15 argument subsequent to the briefs. I think that's what we were
16 envisioning.

17 MR. SELF: Right.

18 COMMISSIONER DAVIDSON: So stipulated record, then
19 briefs, then oral argument at agenda conference or some special
20 conference, and, and then we'll just leave it up to staff and
21 the parties to come up with a recommendation as to the time.

22 I mean, my -- I think that ten minutes of oral
23 argument might not be sufficient since we're foregoing a
24 hearing and the evidence is stipulated, you're presenting
25 briefs. Whatever amount, whatever reasonable amount of time

1 the parties feel to argue their case. And the parties -- I was
2 going to say it doesn't really matter what the parties
3 anticipate because I doubt we'll be ruling from the bench on
4 this one. Hopefully we can drag it out long enough that the,
5 we'll have a national policy on this issue. But --

6 MS. MASTERTON: I don't know, Commissioner. I think
7 we've been trying to do that for the last couple of years.

8 COMMISSIONER DAVIDSON: Oh, I don't think many people
9 have been pushing for a national policy for the last couple of
10 years. I think people have wanted a patchwork of 50 state
11 policies, but hopefully we can get there now.

12 MR. FORDHAM: Commissioner, they were talking in
13 terms of 15, 20 minutes per side at agenda.

14 COMMISSIONER DAVIDSON: That, that sounds absolutely
15 reasonable; longer if you need it, a half an hour, whatever,
16 whatever works.

17 MR. SELF: I think what we were talking about is
18 since we will have already submitted briefs and everyone will
19 have had the benefit of reading those, really a five-minute
20 summary. And then it's really the questions that the
21 Commission and staff have for the parties to kind of flesh out,
22 well, you said this. What did you really mean? How, how does
23 this impact that?

24 COMMISSIONER DAVIDSON: Okay.

25 MR. SELF: So that kind of give and take is really --

1 and since the Commissioners control that, I mean, we can
2 schedule it for, you know, an hour to do all of that. But
3 obviously if you guys wanted to go longer, I think that's your
4 privilege.

5 COMMISSIONER DAVIDSON: And I hope if -- I hope the
6 parties will really boil this down to its, to its essence. And
7 I don't at all mean to suggest that this is the case with KMC,
8 but if there are clearly calls that are terminating, that are
9 originating or terminating that burden Sprint's network, then
10 just resolve that. Yes, we have calls that burden the network,
11 but what's at issue here is the fundamental policy of how that
12 is compensated. And then you go through the, the litany of
13 arguments that we don't want to apply, you know, the old rules
14 to the new technology and we need intercarrier comp reform and
15 all that. And, and the same with Sprint; to say, you know
16 what, that's all well and good, but we've got an existing
17 compensation regime, and until the rules are changed it should
18 apply across the board to everyone. Sort of the same thing.

19 What, what's not useful is to try and sort of call
20 things VOIP and say, well, but, and they're not regulated and
21 Sprint never sees these. I mean, the evidence is what it is in
22 terms of the scope of calls. Either, either certain, certain
23 voice transmissions touch Sprint's network or they don't.
24 Either those are purely circuit switched or there's a VOIP
25 component. Either the VOIP component is at KMC's, purely KMC's

1 transport network or perhaps it originates on a broadband
2 network. But it's useful to, to identify and distinguish
3 amongst the subsets and then sort of boil down to what we're
4 talking about here is policy. And that's what it seems to me
5 right now we're talking about; not so much the calls, although
6 that may be an issue, we're talking about how, if calls, if
7 there are transmissions that burden, that touch Sprint's
8 network, how, if at all, those calls will be compensated. And
9 that really is a, sort of a policy issue.

10 And any guidance from FCC precedent and Florida
11 Statutes, and just sort of a lot of this is going to come down
12 to basic sort of philosophical views on, on, on what we do. I
13 mean, some folks out there argue that we need to quarantine
14 this issue until it's decided. I think that's sort of the
15 essence of KMC's position on Issue 2. On the other side is
16 quarantine is all well and good, but we're entitled to
17 compensation now. I mean, these are the rules and we agree
18 that the rules should be changed and we've been working to
19 change the rules and at some point the rules hopefully will
20 change, but right now these are the rules. And if you start
21 changing the rules, you create regulatory uncertainty.

22 So, I mean, those are the types of issues we have to
23 decide. And as sort of I've gone through that, it may be that
24 there's not a lot of additional discovery, but I would at least
25 sort of -- it would be comforting to know, to have an issue

1 statement that narrows the scope of what we're talking about.
2 I think that will help the parties, Commission, staff, everyone
3 sort of pigeonhole in on the, the key issue.

4 MR. SELF: Yes.

5 COMMISSIONER DAVIDSON: Let's run through the draft
6 prehearing order.

7 MR. SELF: I think, Commissioner Davidson, the only
8 other thing that I need to add is, and I know this is under
9 the, I think it's under the pending motions section, but in
10 view of this agreement of the parties, excuse me, KMC will
11 withdraw its motion to abate.

12 COMMISSIONER DAVIDSON: Fine. Any edits, revisions
13 to Sections I, II or III?

14 MS. MASTERTON: Well, I guess, you know, in view of
15 what we're agreeing to, the statement about the attendance of
16 the witnesses, I mean, I would assume they'll all be excused
17 from the hearing.

18 COMMISSIONER DAVIDSON: I think so. Staff, could you
19 add some language consistent with the parties' agreement that
20 would address that issue?

21 MR. FORDHAM: Yes, sir.

22 COMMISSIONER DAVIDSON: Thanks. Pending motions,
23 we've addressed that. Proposed stipulations.

24 MR. SELF: We'll have to modify that to reflect the
25 resolution of the remaining issues other than the VOIP issue,

1 and we'll do that in this ten-day process.

2 MS. MASTERTON: I guess I had a question if that was
3 the place to put down what we're agreeing to today as far as
4 how the hearing will be conducted or whether that should be in
5 another --

6 COMMISSIONER DAVIDSON: And that's useful. There may
7 be a section here later on that talks about how the hearing
8 would, would proceed. So let's either cross-reference that or
9 lay out here in the proposed stipulations exactly what will
10 occur.

11 The parties will work out language on Issue 2 and a
12 record will be stipulated, then come briefs, then oral
13 argument. That would be useful to either lay out there
14 specifically or cross-reference somewhere in a later section.

15 Section VI, confidentiality. Section VII. Section
16 VIII will need to be modified. Staff, if you can just work on
17 that to reflect the parties' agreement.

18 MR. FORDHAM: Correct.

19 COMMISSIONER DAVIDSON: I'd like to just not, not
20 actually impose a time limit and -- or perhaps we anticipate
21 opening statements of approximately a half hour per side, but
22 somehow put in there that we, which we do, but we have the
23 discretion to, to let the parties speak for whatever is an
24 appropriate amount of time.

25 MR. FORDHAM: Commissioner, under the guidelines

1 we've been discussing, I was not under the impression they
2 would actually make opening statements at the hearing, but
3 rather just submit the --

4 COMMISSIONER DAVIDSON: Oh, you know what, that's a
5 good point. Perhaps, perhaps here's a good place, too, to
6 talk -- to mention that the parties will not be, per agreement
7 parties will not be making any opening statements at the
8 hearing. And then just again for sake of clarity, reference
9 that they will be making oral argument at an agenda or special
10 agenda date to be determined.

11 MR. FORDHAM: Correct.

12 COMMISSIONER DAVIDSON: Section IX.

13 MS. MASTERTON: Yeah. I mean, I guess ultimately
14 Section IX would be amended to eliminate all of the witnesses
15 on the issues that we've resolved.

16 COMMISSIONER DAVIDSON: Yes.

17 MS. MASTERTON: And I guess we're going to
18 communicate that to you, Lee.

19 MR. FORDHAM: Correct.

20 MR. SELF: And the same would in essence be true on
21 Section X as well.

22 COMMISSIONER DAVIDSON: Right. The order of the
23 witnesses, they won't be heard, just their testimony and
24 summaries of testimony. Well, will summaries be presented as
25 well or just --

1 MR. SELF: No.

2 COMMISSIONER DAVIDSON: All right.

3 MR. FORDHAM: Just stipulated into the record, I
4 would expect, Commissioner.

5 COMMISSIONER DAVIDSON: Exhibit list, same,
6 stipulated into the record.

7 Basic, basic positions and issues and positions. If
8 you have changes to that, just go ahead and work that out with,
9 with staff, and obviously Issue 2 will change. But any, any
10 edits in terms of the other basic positions, you can just
11 communicate those to staff.

12 MR. SELF: It may be appropriate to revise the basic
13 position perhaps.

14 MS. MASTERTON: Based on the narrower issues. Right.

15 MR. SELF: Right.

16 COMMISSIONER DAVIDSON: Posthearing procedures, fine.

17 And --

18 MR. FORDHAM: Commissioner, staff will explore the
19 new dates between the parties and Sandy Moses and submit those
20 to you for approval.

21 COMMISSIONER DAVIDSON: Perfect. Anything else,
22 parties?

23 MS. MASTERTON: No. I think that's it. So the next
24 thing is that we will get from you all a redraft of the issues
25 for, for our review.

1 COMMISSIONER DAVIDSON: Yes.

2 MS. MASTERTON: Okay. And then, Lee, we'll go from
3 there to talk about the discovery and the testimony, et cetera.

4 MR. FORDHAM: Very good.

5 MR. SELF: What we might want to do is set up a
6 conference call next week sometime to go over that draft, and
7 the parties bring to that call how these stipulated issues fall
8 out and what we think is left. And Sprint and KMC in the
9 interim will work to -- in terms of what's fallen out and what
10 we think is left to stipulate into the record and get that
11 together.

12 MR. FORDHAM: Okay. Sounds good.

13 COMMISSIONER DAVIDSON: Staff, any other issues?

14 MR. FORDHAM: Nothing else, Commissioner.

15 COMMISSIONER DAVIDSON: Hearing nothing, hearing
16 adjourned.

17 MS. MASTERTON: Thank you.

18 MR. SELF: Thanks.

19 (Prehearing conference concluded at 10:12 a.m.)
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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER


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I, LINDA BOLES, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS SEPTEMBER 1, 2004.


LINDA BOLES, RPR
FPSC Official Commission Reporter
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