

Matilda Sanders

From: Ann Bassett [abassett@lawfla.com]
Sent: Monday, December 13, 2004 4:44 PM
To: Filings@psc.state.fl.us
Subject: Florida Docket 031047-TP Filing

The person responsible for this electronic filing is:

Floyd R. Self
Messer, Caparello & Self, P.A.
P.O. Box 1876
Tallahassee, FL 32302-1876
(850) 222-0720
fself@lawfla.com

The Docket No. is 031047-TP - Petition of KMC Telecom III LLC, KMC Telecom V, Inc. and KMC Data LLC for Arbitration of an Interconnection Agreement with Sprint-Florida, Incorporated pursuant to 47 U.S.C. Section 252(b) of the Communications Act of 1934, as Amended.

This is being filed on behalf of KMC Telecom III LLC, KMC Telecom V, Inc. and KMC Data LLC

Total Number of Pages is 6

KMC's Motion for Temporary Abeyance

Ann Bassett
Messer, Caparello & Self, P.A.
Phone: 850-201-5225
abassett@lawfla.com

DOCUMENT NO.
12-13-04
13126-04

LAW OFFICES
Messer, Caparello & Self
A Professional Association

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

December 13, 2004

BY ELECTRONIC FILING

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 (collectively "KMC") is an electronic version of KMC's Motion for Temporary Abeyance in the above referenced docket.

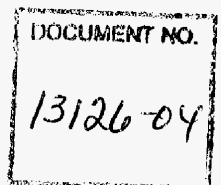
Thank you for your assistance with this filing.

Sincerely yours,



Floyd R. Self

FRS/amb
Enclosures



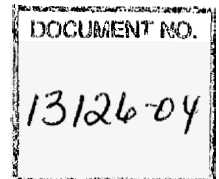
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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: December 13, 2004
Pursuant to 47 U.S.C. Section 252(b) of the)	
Communications Act of 1934, as Amended.)	

**MOTION OF KMC TELECOM III LLC, KMC TELECOM V, INC.,
AND KMC DATA LLC FOR TEMPORARY ABEYANCE**

KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC (collectively, "KMC"), pursuant to Rule 28-106.204, Florida Administrative Code, hereby respectfully request that the Commission hold this arbitration proceeding in abeyance until February 21, 2005. In so doing, KMC requests that the Commission suspend all pending deadlines and consideration of any pending issues until after February 21, 2005. In support of this Joint Motion, KMC states as follows:

1. This arbitration was filed by KMC on November 12, 2003. Prior to the filing of the Petition for Arbitration, the parties were negotiating the appropriate terms and conditions for the Master Interconnection and Resale Agreement ("Agreement") based on the law effective during the negotiations. In a decision dated March 2, 2004 the United States Court of Appeals for the District of Columbia Circuit, in *United States Telecom Ass'n v. FCC*, 359 F.3d 554 ("USTA II"), affirmed in part, vacated in part, and remanded in part certain rules of the Federal Communications Commission ("FCC") that govern the rights and obligations of ILECs and CLECs regarding services and unbundled network elements. While the effectiveness of the *USTA II* decision was initially stayed by the court, the court's mandate was ultimately issued on June 15, 2004. On August 20, 2004, the FCC released its Order in *In the Matter of Unbundled*



Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 (“*Interim Order*”). The FCC has indicated its intent to issue unbundling rules prior to the end of 2004.

2. As this case has proceeded, the parties have continued to negotiate and resolve issues. Based upon those discussions, KMC and Sprint have narrowed the disputed issues to one involving voice over internet protocol (“VoIP”). As this Commission is well aware, the FCC has issued three orders this year regarding VoIP issues¹ and its main policy case, including compensation and regulatory obligations, is scheduled for resolution in the FCC’s *IP-Enabled Services Proceeding*, WC Docket No. 04-36, in 2005.

3. In each of the other states where KMC and Sprint are engaged in an arbitration proceeding, Sprint has agreed with KMC to an abeyance to provide KMC and Sprint with the time necessary to incorporate into the Agreement language reflective of the above referenced proceedings. In these other states, Sprint agreed with KMC that a joint abeyance would promote administrative efficiency, by permitting the parties with the opportunity to address the impact of these various proceedings since this arbitration was filed. On the basis of the Joint Motions in these other states, the North Carolina Commission has already approved the Joint Motion to Abate those proceedings, and the parties are awaiting orders from the Tennessee and Minnesota commissions.

¹ *Petition for Declaratory Ruling and pulver.com’s Free World dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, 19 FCC Rcd 3307 (2004) (*Pulver Declaratory Ruling* or *Pulver*). *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 (2004) (*AT&T Declaratory Ruling*). *Vonage Holdings Corporation Petition for Declaratory Ruling concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267, Nov. 12, 2004.

4. KMC notes that some of the urgency for this arbitration has been lessened by KMC's adoption of the MCI-Sprint interconnection agreement on June 15, 2004. While the MCI-Sprint agreement is scheduled to expire later in 2005, at the present time KMC and Sprint are operating pursuant to a currently valid and effective interconnection agreement.

5. KMC has previously agreed to waive the time frames specified in 47 U.S.C. 252(b)(4)(C), and hereby agrees to continue to waive such time frames and not to appeal an arbitration decision on the grounds that the Commission failed to act within those time frames. During the abeyance period, the parties would also continue their efforts to address the outstanding matters in the arbitration.

6. In consideration of these circumstances, KMC respectfully requests that the Commission hold this proceeding in abeyance to provide additional time for the parties to properly address the effect of both the UNE and VoIP proceedings that should be included in the Agreement. While the telecommunications regulatory environment has been continuously evolving and changing since the 1995 Florida and 1996 federal telecommunications competition statutes, in view of the present outstanding proceedings and their impact on this arbitration, a brief "time out" is very necessary and appropriate.

7. Pursuant to Rule 28-106.204(3), Florida Administrative Code, counsel for KMC has been advised by counsel for Sprint that Sprint objects to this Motion.

WHEREFORE, KMC respectfully requests that the Commission hold this arbitration proceeding in abeyance until February 21, 2005. Upon conclusion of the abeyance time-period, the Commission should conduct a status conference to see where the parties are on the outstanding remaining matters for the case and to set a schedule for their resolution.

Respectfully submitted this 13th day of December, 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.
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W., Fifth Floor
Washington, D.C. 20036
(202) 955-9600 (voice)
(202) 955-9792 (facsimile)
EYorkgitis@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 HEREBY CERTIFY that true and correct copies of the foregoing have been served upon the following parties by e-mail (*) and/or U.S. Mail this 13th day of December, 2004.

Lee Fordham, Esq.*
General Counsel's Office, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Susan Masterton, Esq.*
Sprint-Florida, Incorporated
P.O. Box 2214
Tallahassee, FL 32316-2214

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



Floyd R. Self