

ORIGINAL

Timolyn Henry

From: Whitt, Chrystal [CC] [Chrystal.Whitt@mail.sprint.com]
Sent: Friday, February 25, 2005 4:23 PM
To: Filings@psc.state.fl.us
Subject: RE: 031047-TP Sprint & KMC's Joint Motion for Abeyance
Attachments: Sprint-KMC's Joint Motion for Abeyance.pdf

Filed on behalf of:

Susan S. Masterton

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Law/External Affairs

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Docket No. 031047-TP

Title of filing: Sprint-Florida Incorporated's and KMC Telecom III LLC's, KMC Telecom V, Inc.'s and KMC Data LLC's Joint Motion for Abeyance

Filed on behalf of: Sprint & KMC

No. of pages: 9

Description: Sprint & KMC's Joint Motion for Abeyance

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SEC 1

OTH Kim P.

Chrystal Whitt
Legal Secretary, Law/External Affairs
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DOCUMENT NUMBER-DATE

01971 FEB 25 05

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ORIGINAL



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February 25, 2005

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
& Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 031047-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint-Florida, Incorporated ("Sprint") and KMC Telecom III, LLC, KMC Telecom V, Inc. and KMC Data, LLC (collectively "KMC") is Sprint's and KMC's Joint Motion for Abeyance.

Copies are being served on the parties in this docket pursuant to the attached certificate of service.

If you have any questions regarding this electronic filing, please do not hesitate to call me at 850-599-1560.

Sincerely,

A handwritten signature in black ink that reads "Susan S. Masterton".

Susan S. Masterton

Enclosure

DOCUMENT NUMBER-DATE
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**CERTIFICATE OF SERVICE
DOCKET NO. 031047-TP**

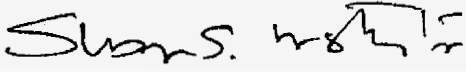
I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Electronic and U.S. mail on this 25th day of February, 2005 to the following:

Carris (Lee) Fordham
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

KMC Data LLC/KMC Telecom III LLC/KMC Telecom V, Inc.
Marva B. Johnson
1755 North Brown Road
Lawrenceville, GA 30043-8119

Kelley Drye & Warren LLP
Yorkgitis/Mutschelknaus
1200 19th Street, N.W.,
Fifth Floor
Washington, DC 20036

Messer Law Firm
Floyd R. Self, Esq.
P.O. Box 1876
Tallahassee, FL 32302-1876



Susan S. Masterton

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of Petition of KMC Telecom III) Docket No. 031047-TP
LLC, KMC Telecom V, Inc., and KMC Data)
LLC For Arbitration of an Interconnection)
Agreement with Sprint- Florida, Incorporated) Filed: February 25, 2005

SPRINT-FLORIDA INCORPORATED'S AND KMC TELECOM III LLC'S,
KMC TELECOM V, INC.'S AND KMC DATA LLC'S
JOINT MOTION FOR ABEYANCE

KMC Telecom III, LLC, KMC Telecom, V, Inc. and KMC Data, LLC (collectively "KMC"), and Sprint-Florida, Incorporated ("Sprint"), by and through their respective undersigned counsel, and pursuant to Rule 28-106.204, Florida Administrative Code, hereby jointly move for an abeyance of all remaining controlling dates for the filing of prefiled supplemental rebuttal testimony and exhibits and the submission of briefs, as well as any outstanding discovery responses (as set forth Order No. PSC-05-0073-PCO-TP), due to settlement by the parties of the one remaining issue in this docket, that is, Issue 2, relating to the appropriate compensation for voice over internet protocol (VoIP) traffic. (See Settlement Agreement, attached.) Based on the resolution of this issue by the parties, as well as the prior resolution through negotiation and agreement of the parties of all of the other issues originally identified in the Petition for Arbitration and Response, all pending issues in this docket have been resolved.

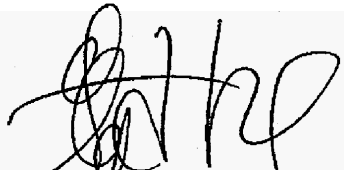
The parties have agreed to file an interconnection agreement reflecting their agreement on the arbitration issues, as well as all other issues agreed to through negotiation of the parties, no later than March 23, 2005, for approval by the Commission

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pursuant to sections 251 and 252 of the Communications Act of 1934, as amended, and Florida Statutes sections 120.80(13), 364.161 and 364.162.

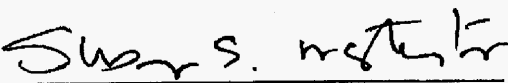
WHEREFORE, KMC and Sprint respectfully request that the Prehearing Officer enter an Order granting this Joint Motion for Abeyance and ordering an abatement of all remaining controlling dates set forth in Order No. PSC-05-0073-PCO-TP, pending the filing of the interconnection agreement by KMC and Sprint and the Commission's approval of the interconnection agreement pursuant to sections 251 and 252 of the Communications Act of 1934, as amended, and Florida Statutes sections 120.80(13), 364.161 and 364.162.

Respectfully submitted, this 25th day of February, 2005.



Floyd R. Self, Esq.
Messer, Caparello & Self, P.A.
Post Office Box 1876
Tallahassee, FL 32302-1876
(850) 222-0720

ATTORNEY FOR KMC



Susan S. Masterton, Esq.
1313 Blair Stone Road
P.O. Box 2214
Tallahassee, FL 32316-2214
(850) 599-1560 (phone)

ATTORNEY FOR SPRINT

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Settlement Agreement") is made and entered into this 24th day of February, 2005, by and between KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC (hereinafter "KMC"), and Sprint-Florida, Incorporated (hereinafter "Sprint"). KMC and Sprint are referred to collectively herein as the "Parties."

Background

On November 12, 2003 KMC filed its petition for arbitration of a proposed interconnection agreement with Sprint (Docket No. 031047-TP); and

On December 8, 2003 Sprint filed its Response to the Petition for Arbitration; and

The Parties have continued to negotiate and have reached agreement on the remaining arbitration issues; and

NOW THEREFORE, in consideration of the foregoing, the mutual covenants, conditions and promises contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by each party to the other, Sprint and KMC, each intending to be legally bound hereby, covenant and agree as follows:

SETTLEMENT TERMS

1. The Parties agree to include the following language in the new interconnection agreement to resolve the remaining issue in the arbitration proceeding regarding compensation of Voice over Internet Protocol traffic:

Voice over Internet Protocol ("VoIP") traffic that meets the following criteria is a telecommunications service and is subject to reciprocal compensation, interstate or intrastate access charges, based on the jurisdiction of the call. Such traffic should be rated, routed, and compensated consistent with the jurisdictional nature of the call:

- (1) the traffic uses ordinary customer premises equipment (CPE) with no enhanced functionality;
- (2) the traffic originates and terminates on the public switched telephone network (PSTN); and
- (3) the traffic undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology.

The Parties have been unable to agree as to whether IP Enabled Services Traffic and VoIP Traffic that does not meet the above criteria constitute Switched Access Traffic. The Parties also disagree on the appropriate compensation for that traffic that does not meet the above criteria. Both Parties reserve the right to bill for and pursue compensation for all traffic that does not meet the criteria above, including invoking the Dispute Resolution provisions of this Agreement. In agreeing to this, neither Party waives its rights to participate and fully present its respective positions in any proceeding before the Commission, FCC or other authority considering the appropriate compensation to be paid for IP Enabled Services Traffic and VoIP Traffic. Notwithstanding the foregoing, and without waiving any rights with respect to either Party's position as to the jurisdictional nature of IP Enabled Services Traffic and VoIP Traffic, the Parties agree to abide by any effective and applicable FCC rules and orders regarding the nature of such traffic and the compensation payable by the Parties for such traffic, if any.

Each Party shall take steps to ensure that all calls (including IP Enabled Services Traffic and VoIP traffic) that it delivers to the receiving Party include a call record, and that such call records are transmitted intact to the receiving Party. Neither Party shall: (1) remove call records, (ii) alter or replace call records, or (iii) insert or add any call record information except as specifically allowed by industry guidelines. Using its best efforts and to the extent technically feasible, each Party also shall undertake steps to ensure that any service provider who hands off traffic for delivery to the other Party does not: (i) remove call records, (ii) alter or replace call records, or (iii) insert or add any call record information except as specifically allowed by industry guidelines. Neither Party shall knowingly and intentionally (a) strip or alter call records to disguise the jurisdiction of the a call or (b) permit third parties to do so for traffic the Party delivers to the other Party.

2. In addition, the Parties agree to include the following language in the new interconnection agreement to address the new unbundling rules issued by the FCC to be effective March 11, 2005:

On 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 (D.C. Cir. 2004) ("*USTA I*"), affirmed in part, vacated in part, and remanded in part certain rules of the Federal Communications Commission ("FCC") concerning incumbent LECs' obligations to make elements of their networks available on an unbundled basis. In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Docket No. CC 01-338. *USTA II* was stayed twice by the D.C. Circuit Court and was not in effect until the mandate was issued on June 15, 2004. The FCC issued its Order on Remand February 4, 2005, to be effective March 11, 2005. The Parties have not incorporated into this agreement any changes that may be necessary as a result of *USTA II* or the *Order on Remand*. The Parties agree that this issuance of *USTA II* and the *Order on Remand* constitute revisions or modifications of the Applicable Rules under which this Agreement was negotiated and arbitrated. The Parties agree to enter into good faith negotiations to amend this Agreement to reflect such Amended Rules. If within sixty (60) days of the effective date of this Agreement the Parties are unable to reach agreement with respect to the applicability of such order or the resulting appropriate modifications to this Agreement required because of *USTA II* and the *Order on Remand*, either party may file the dispute with Commission, 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.

3. The Parties agree to include the modify language already agreed to as follows (the modifications are underlined):

The Parties will provide CCS to each other in conjunction with all trunk groups supporting Local Traffic and transit and toll traffic, except for known limitations with INP trunking. The Parties will cooperate on the exchange of TCAP messages to facilitate full inter-operability of CCS-based features between their respective networks, including all CLASS features and functions. All available CCS signaling parameters will be provided including, but not limited to ANI, originating line information ("OLI"), calling party category, Charge Number, and Calling Party Number. All privacy indicators will be honored. OLI information will be provided consistent with industry guidelines and neither Party will alter OLI information in order to disguise the jurisdictional nature of the traffic. For terminating FGD traffic, Sprint will pass CPN if it receives CPN from

FGD carriers. All privacy indicators will be honored. Where available, network signaling information such as transit network selection ("TNS") parameter (CCS platform) and CIC/OZZ information (non-CCS environment) will be provided by KMC wherever such information is needed for call routing or billing. The Parties will follow all OBF adopted standards pertaining to TNS and CIC/OZZ codes.

4. The Parties agree to execute a new interconnection agreement incorporating the above provisions, as well as the other provisions previously agreed to through negotiations and settlement by the parties, and submit it for Commission approval by March 23, 2005.

OTHER SETTLEMENT TERMS AND CONDITIONS

5. The Parties further agree that this Settlement Agreement shall be binding on the respective successors and permitted assigns of the Parties. No promise or agreement other than those recited above has been made as consideration for this Settlement Agreement, and this Settlement Agreement is entered into solely for the consideration recited above.

6. Except as otherwise provided in this Settlement Agreement, no amendment or waiver of any provision of this Settlement Agreement shall be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of a Party strictly to enforce any terms, rights or conditions of this Settlement Agreement shall be construed as a waiver by that Party. Except as specifically provided herein, by entering into this Settlement Agreement neither Party waives any right granted to it under law.

7. The Parties agree that this Settlement Agreement represents a compromise of each Party's respective positions with regard to the Dispute. This Settlement Agreement and any discussion made during the negotiations of this settlement are not, and shall not, in any way be construed to be an admission by either Party, or any of their former or current parent companies, successors, assigns, affiliates, subsidiaries, directors, officers, employees and agents, that any

one of them may have acted wrongfully and/or illegally in any manner and the settlement set forth herein shall not be construed by any person or in any court, agency or tribunal whatsoever as a present or past admission of liability.

8. The Parties negotiated the terms and conditions of this Settlement Agreement as a total arrangement, and it is intended to be taken as a whole. If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to affect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

9. Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest hereunder, without the written consent of the other Party, shall be void, except that either Party may assign all of its rights, and delegate its obligations, liabilities and duties under this Settlement Agreement, either in whole or in part, to any entity that is or becomes a corporate affiliate of that Party without consent, but with written notification. The effectiveness of an assignment shall be conditioned upon the assignee's assumption of the rights, obligations, and duties of the assigning Party.

10. Sprint and KMC agree they will execute any further instruments and documents, and will perform any further acts as may be reasonably necessary or convenient to carry out and perform the terms and provisions of this Settlement Agreement.

11. Each Party represents that the person whose signature appears on this Settlement Agreement on behalf of such Party has authority to bind such Party. This Settlement Agreement

has been carefully and fully read by the Parties and their counsel. The Parties understand the contents of this Settlement Agreement; have signed this Settlement Agreement of their own free act and deed; and understand this Settlement Agreement shall be binding on them, their successors, heirs and assigns.

12. This Settlement Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida, without reference to its change of law principles.

13. The Parties agree to bear their own attorneys' fees and costs in connection with the negotiation and preparation of this Settlement Agreement.

14. This Settlement Agreement may be signed in counterparts and is effective as the date execution by the Parties is completed.

Sprint-Florida, Incorporated

By: _____

Title: _____

Date: _____

KMC Telecom III, LLC, KMC Telecom V, Inc., and KMC Data LLC

By: *[Signature]*

Title: *VICE President & Senior Counsel*

Date: *2/24/2005*

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Sprint-Florida, Incorporated

By: 

Title: AVP - Strategic Sales & Account Management

Date: 2/25/05

KMC Telecom III, LLC, KMC Telecom V, Inc., and KMC Data LLC

By: _____

Title: _____

Date: _____