

LAW OFFICES  
**Messer, Caparello & Self**  
A Professional Association

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

March 4, 2005

**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. 041144-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 Motion for Audit of Sprint-Florida Incorporated and Sprint Communications Company, Limited Partnership d/b/a Sprint 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

FRS/amb  
Enclosures  
cc: Parties of Record

DOCUMENT NUMBER-DATE

02281 MAR-4 05

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Complaint of Sprint-Florida, Incorporated	)	
Against KMC Telecom III LLC,	)	
KMC Telecom V, Inc. and KMC Data LLC,	)	Docket No. 041144-TP
for failure to pay intrastate access charges	)	Filed: March 4, 2005
pursuant to its interconnection agreement and	)	
Sprint's tariffs and for violation of	)	
Section 364.16(3)(a), Florida Statutes.	)	

---

**KMC TELECOM III LLC, KMC TELECOM V, INC.  
AND KMC DATA LLC'S MOTION FOR AUDIT OF  
SPRINT-FLORIDA INCORPORATED AND  
SPRINT COMMUNICATIONS COMPANY, LIMITED PARTNERSHIP D/B/A SPRINT**

KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC (collectively "KMC"), pursuant to 25-22.036 and 28-106.204, Florida Administrative Code, hereby requests that the Florida Public Service Commission ("Commission") conduct an audit of Sprint-Florida, Incorporated ("Sprint") and Sprint's IXC affiliate, Sprint Communications Company, Limited Partnership d/b/a Sprint ("Sprint IXC") (collectively, "the Sprint companies"). The purpose of the audit is to 1) investigate the Sprint companies' plans, policies, and practices of routing toll traffic through the Tallahassee and Ft. Myers Sprint tandems in a manner to avoid the payment of access charges lawfully due to KMC; 2) Sprint IXC's plans, policies, and practices of routing toll traffic in a such manner to avoid the payment of access charges lawfully due to KMC when providing terminating access services to KMC customers in the Clearwater, Daytona Beach, Ft. Myers, Melbourne, Pensacola, Sarasota, and Tallahassee markets; and 3) to determine how much is due to KMC in access charge payments so avoided. In support of this request, KMC states as follows:

1. On February 28, 2005, KMC filed its Answer, Affirmative Defenses, and Counterclaims in this docket. In making its claims against Sprint-Florida, Incorporated

("Sprint") and Sprint's IXC affiliate, Sprint Communications Company, Limited Partnership d/b/a Sprint ("Sprint IXC"), KMC has alleged that the Sprint companies engaged in various practices by which Sprint and Sprint IXC diverted or otherwise converted the termination of toll traffic to KMC's customers in the Clearwater, Daytona Beach, Ft. Myers, Melbourne, Pensacola, Sarasota, and Tallahassee markets in such a manner as to avoid the payment of lawfully due access charges to KMC as the terminating carrier.

2. As KMC explained in its February 28, 2005, Answer, Affirmative Defenses, and Counterclaims, KMC has engaged in certain analyses that has led it to conclude that the Sprint companies are engaged in conduct that has reduced, in some cases effectively to zero in some markets, the number of minutes of terminating toll traffic that are subject to the payment of access charges to KMC as the terminating carrier. The allegations contained in KMC's February 28, 2005, Answer, Affirmative Defenses, and Counterclaims are further supported by the prefiled direct testimony and exhibits of Marva Brown Johnson and Timothy E. Pasonski filed on that same day, and which KMC hereby incorporates herein.

3. KMC has every confidence that the analysis it has conducted and reported to this Commission does fairly and accurately portray the actions of the Sprint companies to avoid the payment of lawfully due access charges to KMC. Consistent with the ongoing nature of this investigation of the Sprint companies, KMC on March 1, 2005, served on the Sprint companies interrogatories and request for production of documents that KMC believes will serve to further substantiate its claims.

4. Notwithstanding the record that KMC has compiled to date, and which it is continuing to compile, KMC believes that in order to more completely understand the facts surrounding the Sprint tandems in Tallahassee and Ft. Myers, as well as the Clearwater, Daytona

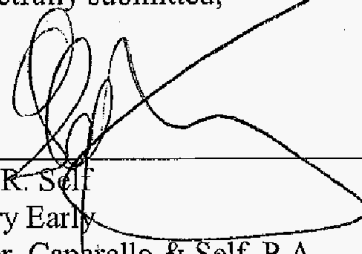
Beach, Ft. Myers, Melbourne, Pensacola, Sarasota, and Tallahassee markets, is advisable to conduct an audit of the Sprint companies. Specifically, the Sprint tandem records in Tallahassee and Ft. Myers should be audited to analyze the all of the traffic routed through these tandems that are destined for KMC customers in Tallahassee and Ft. Myers. In addition, the Commission should conduct an audit of the Sprint IXC records associated with the termination of traffic to KMC customers in the Clearwater, Daytona Beach, Ft. Myers, Melbourne, Pensacola, Sarasota, and Tallahassee markets to determine the extent to which Sprint IXC has acted to avoid the payment of access charges to KMC for the termination of toll traffic to KMC's customers in those markets.

6. There are various provisions of KMC's interconnection agreements with Sprint and KMC tariff provisions that authorize the conduct of audits in order to further determine the rights and obligations of the parties. This Commission previously determined that an audit or other such investigation is not a condition precedent to the initiation of a formal claim with this Commission. However, an audit is the fairest and most expeditious means of determining the full extent of what happened, and why. Sprint-KMC's interconnection agreements and the KMC tariffs, as well as the Commission's own enabling statutes provide that a Commission initiated audit may be undertaken. Thus, in order to fulfill its responsibility as a fact finder in this docket, the Commission should engage and utilize the results of an audit in this proceeding.

WHEREFORE, KMC respectfully requests that the Commission order and conduct such audits of Sprint and its IXC affiliate as are necessary to investigate KMC's claims that (1) Sprint has violated its interconnection agreements with KMC by misdirecting interexchange traffic over its local trunks, thereby disguising that traffic as local traffic and avoiding access charges called for in the interconnection agreements; (2) Sprint has violated Section 364.16(3)(a), Fla. Stat. for

knowingly delivering traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service; (3) Sprint IXC has violated KMC's tariff."

Respectfully submitted,



Floyd R. Self  
E. Gary Early  
Messer, Caparello & Self, P.A.  
Post Office Box 1876  
Tallahassee, FL 32302-1876  
Telephone: (850) 222-0720  
Facsimile: (850) 224-4359  
e-mail: fself@lawfla.com  
e-mail: gearly@lawfla.com

Edward A. Yorkgitis, Jr.  
Barbara A. Miller  
Kelley Drye & Warren LLP  
1200 19th Street, N.W., Fifth Floor  
Washington, D.C. 20036  
Telephone: (202) 955-9600  
Facsimile: (202) 955-9792  
e-mail: cyorkgitis@kelleydrye.com  
e-mail: bmiller@kelleydrye.com

and

Marva Brown Johnson  
KMC Telecom Holdings, Inc.  
1755 North Brown Road  
Lawrenceville, GA 30043  
Telephone: (678) 985-6220  
Facsimile: (678) 985-6213  
e-mail: marva.johnson@kmc telecom.com

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

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been served upon the following parties by electronic mail and/or U.S. Mail this 4<sup>th</sup> day of March, 2005.

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

Dovie L. Rockette-Gray  
General Counsel's Office, Room 370  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Ms. Nancy Pruitt  
Division of Competitive Markets and Enforcement  
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

Sprint Communications Company,  
Limited Partnership d/b/a Sprint  
c/o Sprint-Florida, Incorporated  
P.O. Box 2214 (MC FLTLHO0107)  
Tallahassee, FL 32316-2214

  
\_\_\_\_\_  
Floyd R. Self