

Kay Flynn

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From: Ann Bassett [abassett@lawfla.com]
Sent: Monday, March 14, 2005 4:46 PM
To: Susan Masterton; Lee Fordham; Dovie Rockette-Gray; Filings@psc.state.fl.us; Nancy Pruitt
Cc: CYorkgitis@KelleyDrye.com; mabrow@kmctelecom.com; Floyd Self
Subject: Docket 041144-TP
Attachments: 2005-03-14, KMC's Preliminary Objections to Sprint's Second Set of Discovery.pdf

The person responsible for this electronic filing is:

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The Docket No. is 041144-TP Sprint Complaint Against KMC

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

Total Number of Pages is 11

KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC Preliminary Objections to Sprint-Florida, Incorporated's Second Set of Interrogatories (Nos. 23-38) and Second Production of Document Request (Nos. 12-23)

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March 14, 2005

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. 041144-TP

Dear Ms. Bayó:

Enclosed for filing in the above referenced docket on behalf KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC LC is an electronic copy of KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC Preliminary Objections to Sprint-Florida, Incorporated's Second Set of Interrogatories (Nos. 23-38) and Second Production of Document Request (Nos. 12-23) in the above referenced docket.

Thank you for your assistance with this filing.

Sincerely yours,


Floyd R. Self

FRS/amb
Enclosures
cc: Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Sprint-Florida, Incorporated)
Against KMC Telecom III LLC,)
KMC Telecom V, Inc. and KMC Data LLC,)
for failure to pay intrastate access charges)
pursuant to its interconnection agreement and)
Sprint's tariffs and for violation of)
Section 364.16(3)(a), Florida Statutes.)

Docket No. 041144-TP
Filed: March 14, 2005

**KMC TELECOM III LLC, KMC TELECOM V, INC.
AND KMC DATA LLC'S PRELIMINARY OBJECTIONS TO SPRINT-FLORIDA,
INCORPORATED'S SECOND SET OF INTERROGATORIES (NOS. 23-38) AND
SECOND PRODUCTION OF DOCUMENT REQUEST (NOS. 12-23)**

KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC (hereinafter "KMC"), hereby states its preliminary objections to Sprint-Florida Incorporated's (hereinafter "Sprint") Second Set of Interrogatories (Nos. 23-38) and Second Production of Document Request (Nos. 12-23) to KMC, served on March 4, 2005. The Objections stated herein are preliminary in nature and are made at this time for the purpose of complying with the ten-day requirement set forth in the Procedural Order.

A. General Objections

1. KMC objects to Sprint's Discovery Requests and all Instructions and Definitions associated with those Discovery Requests to the extent they purport to impose obligations that are different from, or go beyond, the obligations imposed under Rules 1.280, 1.340, and 1.351 of the Florida Rules of Civil Procedures, and the Rules of the Florida Public Service Commission ("the Commission").

2. KMC objects to the Discovery Requests and all Instructions and Definitions associated with those Discovery Requests to the extent they seek information outside the scope

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of the issues raised in this proceeding, and to the extent their principal purpose appears to be to harass KMC and unnecessarily impose costs on KMC.

3. KMC objects to the Discovery Requests and all Instructions and Definitions associated with those Discovery Requests 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.

4. KMC objects to each Discovery Request 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 Requests.

5. KMC objects to the Discovery Requests and all Instructions and Definitions associated with those Discovery Requests to the extent they seek confidential business, financial, or other proprietary documents or information. KMC further objects to the Discovery Requests to the extent they seek documents or information protected by the privacy protections of the Florida or United States Constitutions, or any other law, statute, or doctrine.

6. KMC objects to the Discovery Requests to the extent they seek documents or information equally available to Sprint as to KMC through public sources or records, because such requests subject KMC to unreasonable and undue annoyance, oppression, burden, and expense.

7. 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.

8. To the extent KMC responds to Sprint's Discovery Requests, KMC reserves the right to amend, replace, supersede, and/or supplement its responses as may become appropriate in the future. However, it undertakes no continuing or ongoing obligation to update its responses.

9. KMC objects to the Discovery Requests and all Instructions and Definitions associated with those Discovery Requests 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.

10. KMC has interpreted the Discovery Requests to apply to KMC's regulated intrastate operations in Florida and will limit its responses accordingly. To the extent that any Discovery Requests or any Instructions and Definitions associated with those Discovery Requests 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 Discovery Requests as irrelevant, overly broad, unduly burdensome, and oppressive.

11. KMC objects to the Discovery Requests 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.

12. KMC objects to the Discovery Requests 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.

13. 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 Sprint's Discovery Requests. 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 Discovery Requests or all Instructions and Definitions associated with those Discovery Requests purport to require more, KMC objects on the grounds that compliance would impose an undue burden or expense on KMC.

14. KMC objects to the Discovery Requests and all Instructions and Definitions associated with those Discovery Requests 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.

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

16. KMC objects to the Discovery Requests and all Instructions and Definitions associated with those Discovery Requests 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.

17. KMC objects to the disclosure of confidential or proprietary information or trade secrets prior to entry of a protective order restricting disclosure of such information in a manner to be agreed upon by the parties. KMC further objects to the disclosure of confidential or proprietary information of third-parties which KMC is required to maintain as confidential pursuant to agreements with such parties and/or pursuant to statute, administrative decree, or court order. Any proprietary or confidential information or documents will be produced only pursuant to the confidentiality agreement of the parties or protective order of the Commission that limits the use of these documents and information to this proceeding and limits access to all documents and information designated as “Highly Confidential” to outside counsel for Sprint, expert consultants and witnesses, and only those persons within Sprint whose access to the documents is necessary to conducting this litigation and, in no case, to any person within Sprint involved in sales and marketing.

18. 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, 1.340, and 1.351 of the Florida Rules of Civil 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 includes network transmissions, switch data, or other electronic routing 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.

19. KMC objects to each and every Discovery Request that seeks information regarding “Voice Over Internet Protocol” (“VoIP”) which subject matter is outside the jurisdiction of this Commission and, as such, these Requests are irrelevant, overly broad, unduly burdensome, and oppressive.

B. Specific Objections

20. **Interrogatory 23.** KMC incorporates its general objections as though more fully set forth herein. Specifically, KMC objects to Interrogatory 23 to the extent that it seeks confidential and proprietary information that is not relevant or likely to lead to the discovery of admissible relevant information. Sprint seeks the identities of customers and details of the services, including telephone numbers, provided by KMC to those customers, information which is not relevant to the demonstration that KMC has other PRI customers.

21. **Interrogatory 25.** KMC incorporates its general objections as though more fully set forth herein. Specifically, KMC objects to Interrogatory 25 to the extent that it seeks confidential and proprietary information that is not relevant or likely to lead to the discovery of admissible relevant information. The number of access lines dedicated to Internet Service Providers served by KMC which receive primarily if not exclusively inward dialing terminated by KMC has no relevance to the access charges that Sprint claims that KMC owes Sprint for Sprint’s termination of calls delivered by KMC

22. **Interrogatory 31.** KMC seeks clarification that subpart (e) is mislabeled in that it should be subpart (b).

23. **Interrogatory 32.** KMC incorporates its general objections as though more fully set forth herein. Specifically, KMC objects to Interrogatory 32 to the extent that it seeks confidential and proprietary information that is not relevant or likely to lead to the discovery of

admissible relevant information. Sprint seeks the identities of customers and details of the services provided by KMC, information which is not relevant to the demonstration that KMC has other PRI customers or what types of services are provided.

24. **Interrogatory 33.** KMC incorporates its general objections as though more fully set forth herein. Specifically, KMC objects to Interrogatory 33 to the extent that it asks KMC, as a common carrier, to speculate about what a third-party enhanced services customer “typically” does with a particular service that “typical” customer purchases from KMC on a common carrier basis. The Interrogatory is also vague and ambiguous because it is subject to multiple interpretations.

25. **Interrogatory 34.** KMC incorporates its general objections as though more fully set forth herein. Specifically, KMC objects to Interrogatory 34 to the extent that it seeks confidential and proprietary information about each of KMC’s known enhanced service provider customers. Sprint seeks the identities of customers and details of the services provided by KMC. KMC further objects to this Interrogatory because it seeks information relating solely to VoIP which falls within the primary jurisdiction of the Federal Communications Commission and, therefore, is outside the scope of these proceedings. Finally, the request is unreasonably burdensome in that it requires KMC to first determine whether any of its customers are enhanced service providers, information which KMC does not track in the normal course.

26. **Interrogatory 38.** KMC incorporates its general objections as though more fully set forth herein. Specifically, KMC objects to Interrogatory 38 to the extent that it seeks confidential and proprietary information which is neither relevant nor likely to lead to the discovery of relevant admissible information. Sprint seeks the identities of customers and details

of the services provided by KMC. The Interrogatory is also vague and ambiguous in that it uses an undefined term, "carrier," which is subject to multiple interpretations.


27. **Document Request 18.** KMC incorporates its general objections as though more fully set forth herein. Specifically, KMC objects to Production of Documents Request 18 to the extent that it seeks confidential and proprietary information. Sprint seeks the identities of customers and details of the services provided by KMC, information that is neither relevant nor likely to lead to the discovery of admissible information.

28. **Document Request 21.** KMC incorporates its general objections as though more fully set forth herein. Specifically, KMC objects to Production of Document Request 21 to the extent it seeks documents or information protected by the attorney-client privilege, and/or the attorney work-product doctrine.

29. **Document Request 22.** KMC incorporates its general objections as though more fully set forth herein. Specifically, KMC objects to Production of Documents Request 22 to the extent that it seeks confidential and proprietary information. Sprint seeks the identities of customers and details of the services provided by KMC, information that is neither relevant nor likely to lead to the discovery of admissible information.

30. **Document Request 23.** KMC incorporates its general objections as though more fully set forth herein. Specifically, KMC objects to Production of Document Request 23 to the extent it seeks documents or information protected by the attorney-client privilege, and/or the attorney work-product doctrine.

Respectfully submitted this 14th day of March, 2005.



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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 14th day of March, 2005.

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