

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

MAY 17, 2005

RE: Docket No. 041144-TP - Complaint against KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC for alleged failure to pay intrastate access charges pursuant to its interconnection agreement and Sprint's tariffs and for alleged violation of Section 364.16(3)(a), F.S., by Sprint-Florida, Incorporated.

Issue 1: Should the Commission grant KMC's request for oral argument or presentation regarding Sprint's Motion to Strike, Motion to Dismiss and, in the alternative, Motion to Bifurcate?

Recommendation: Yes. Because this matter has not yet been to hearing and the questions presented are somewhat unique, staff recommends that the Commission entertain oral presentations from the parties. The length of such presentations is at the Commission's discretion. Staff recommends that they be limited to 10 minutes per party.

**APPROVED**

COMMISSIONERS ASSIGNED: Deason, Bradley, Davidson

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

*Judy Bradley*  
*J. Terry Deason*  
*Chuck M. Davidson*

REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE

04788 MAY 17 05

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Issue 2: Should Sprint's Motion to Strike KMC's Answer, Affirmative Defenses, and Counterclaim and Motion to Dismiss the Counterclaims or, in the alternative, Motion to Bifurcate the Counterclaim, or any portion thereof, be granted?

Recommendation: Staff recommends that the Motions be granted, in part, and denied, in part, to the extent that the Counterclaim should be stricken.

**APPROVED**

Issue 3: Should KMC's Motion for Audit be granted?

Recommendation: If the Commission approves staff's recommendation in Issue 2, staff believes that KMC's motion for Audit is rendered moot; therefore, no vote would be required.

If the Commission denies staff's recommendation in Issue 2, staff recommends that the Motion for Audit be denied.

**NO VOTE**

Issue 4: Should this docket be closed?

Recommendation: No. If the Commission approves staff's recommendation in Issues 2 and 3, this docket should remain open pending resolution of Sprint's Complaint.

**APPROVED**