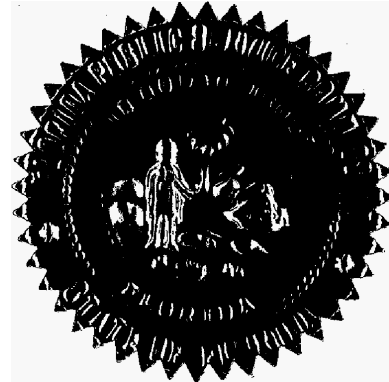


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041144-TP

In the Matter of:

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.



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PROCEEDINGS:           AGENDA CONFERENCE  
                              ITEM NO. 11

BEFORE:                 COMMISSIONER J. TERRY DEASON  
                              COMMISSIONER RUDOLPH "RUDY" BRADLEY  
                              COMMISSIONER CHARLES M. DAVIDSON

DATE:                    Tuesday, May 17, 2005

PLACE:                  Betty Easley Conference Center  
                              Room 148  
                              4075 Esplanade Way  
                              Tallahassee, Florida

REPORTED BY:           LINDA BOLES, RPR  
                              Official FPSC Reporter  
                              (850) 413-6734

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FLORIDA PUBLIC SERVICE COMMISSION 05003 MAY 23 '05

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 FLOYD R. SELF, ESQUIRE, representing KMC Data LLC,  
3 KMC Telecom III LLC and KMC Telecom V, Inc.

4 SUSAN MASTERTON, ESQUIRE, representing  
5 Sprint-Florida, Incorporated.

6 BETH KEATING, ESQUIRE, representing the Florida  
7 Public Service Commission Staff.

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## P R O C E E D I N G S

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2 COMMISSIONER DEASON: Commissioners, we're on Item  
3 11.

4 MS. KEATING: Good morning, Commissioners. Beth  
5 Keating, staff counsel. Item 11 is staff's recommendation on  
6 Sprint's motion to strike, dismiss or bifurcate KMC's answer,  
7 affirmative defenses and counterclaims in this proceeding.  
8 Staff's recommendation also addresses KMC's request for an  
9 audit.

10 Staff has recommended in Issue 1 that oral argument  
11 be granted but that it be limited, and the parties are here to  
12 address the Commission if you do approve staff on Issue 1.  
13 Staff's available to answer any questions you may have.

14 COMMISSIONER DEASON: Commissioners, is there a  
15 motion on Issue 1?

16 COMMISSIONER DAVIDSON: I would move staff on Issue  
17 1 with -- including in the motion five minutes for each side.

18 COMMISSIONER BRADLEY: Seconded.

19 COMMISSIONER DEASON: Moved and seconded. All in  
20 favor, say aye.

21 (Unanimous affirmative vote.)

22 COMMISSIONER DEASON: Okay. Then that disposes of  
23 Issue 1. And we will entertain oral argument, and I believe  
24 this is Sprint's motion.

25 MS. MASTERTON: That's correct.

1 COMMISSIONER DEASON: Please proceed.

2 MS. MASTERTON: Okay. Thank you. Good morning,  
3 Commissioners. The primary basis of Sprint's motion to strike  
4 KMC's counterclaims is that they are untimely, and allowing  
5 them at this point in the proceeding would prejudice Sprint by  
6 delaying the resolution of its complaint.

7 While staff is correct that the model rules do not  
8 provide a specific time frame for filing an answer, Sprint  
9 believes that there has to be some reasonable window for  
10 responding to a complaint or petition, and Sprint would suggest  
11 that that window ends with the issuance of the procedural  
12 order. An answer and counterclaims that are filed after that  
13 time are outside the scope of the procedural order and,  
14 therefore, are unauthorized.

15 KMC's counterclaims not only are untimely and outside  
16 the scope of the procedural order, but the access charge  
17 complaints centrally involve an entity that is not a party to  
18 this proceeding, and that is Sprint Communications Company,  
19 Limited Partnership, Sprint's IXC entity.

20 As staff has recognized, a claim that's made against  
21 an entity that's not a part -- a counterclaim that's made  
22 against a party -- an entity that's not a party is an improper  
23 counterclaim, which by its terms is against an opposing party  
24 to the proceeding.

25 KMC's late filing of its answers and counterclaims

1 prejudices Sprint in the prosecution of its complaint because  
2 they can have no result but to delay the proceeding. While  
3 staff has recognized that KMC's explanation for the delay is  
4 plausible, KMC's explanation does not bear up under scrutiny.

5           In response to Sprint's discovery, KMC admitted that  
6 the local trunk study which forms the basis of KMC's  
7 allegations was performed in March of 2004. The access usage  
8 records which KMC says it used to identify Sprint's IXC traffic  
9 were of necessity from the same time period, and the trend  
10 analysis is merely a monthly summary of what appears to be  
11 KMC's billing records and access line counts. All of the  
12 information that forms the basis of KMC's claims, therefore,  
13 was available to KMC well before the Issue ID in this  
14 proceeding and the issuance of the procedural order. In fact,  
15 Sprint could find nothing that KMC relied on as the basis of  
16 its counterclaim that became available to KMC as a result of  
17 Sprint's filing its complaint or out of the information that  
18 Sprint subsequently provided to KMC through discovery. And in  
19 addition, the count of the counterclaim that involves the 2002  
20 settlement agreement entered into by the parties has been the  
21 subject of a dispute between the parties since 2003.

22           Because KMC had all of the information available to  
23 it that would have enabled it to file its answer and  
24 counterclaim in a timely fashion, Sprint could come up with no  
25 other rationale for the timing of KMC's filing except to delay

1 and impede the resolution of Sprint's complaint. And Sprint is  
2 particularly concerned about a delay in this proceeding because  
3 of the effect that it might have on Sprint's ability to collect  
4 on its claim should Sprint prevail. Just this morning you all  
5 approved a request by KMC to transfer the assets of one of the  
6 KMC entities that's a party to this complaint.

7           The counterclaim involves an entity that is Sprint  
8 IXC, as well as potentially other CLECs and ILECs who are not  
9 parties to Sprint's complaint. It also arises from distinctly  
10 separate facts and transactions. Through testimony and  
11 discovery in the proceeding so far the issues have been  
12 narrowed to primarily the issue of whether the traffic that KMC  
13 is terminating to Sprint is enhanced services providers'  
14 traffic and, therefore, exempt from access charges. In its  
15 counterclaim, KMC itself said that that was not an issue with  
16 the claims that it was making against Sprint-Florida and Sprint  
17 IXC, and certainly Sprint does not intend to raise that issue  
18 in response to KMC's claims. Therefore, since the issues are  
19 not similar, there would be no efficiencies gained by including  
20 the counterclaims in this proceeding. Instead, adding it would  
21 require an Issue ID, testimony and additional discovery, the  
22 same as would be required in a separate proceeding. This  
23 would -- instead of contributing to efficiency, it would add  
24 inefficiencies and delay in processing Sprint's complaint. At  
25 this point in that proceeding all testimony has been filed and

1 several rounds of discovery have already been served and  
2 responded to by the parties.

3 For these reasons, Sprint asks the Commission to  
4 approve the staff recommendation in Issue 2 and strike counter,  
5 KMC's counterclaims from this proceeding, with, of course,  
6 leave for KMC to pursue those claims in a separate proceeding.

7 I also have some additional comments I'd like to make  
8 based on how the Commission would rule on that issue, and I  
9 don't know if you want me to just go ahead with them now or, or  
10 to wait.

11 COMMISSIONER DEASON: Is this in relation to the  
12 audit?

13 MS. MASTERTON: Well, we also have a motion to  
14 dismiss one of the counts of the counterclaim that would still  
15 be a viable motion regardless of the ruling on the motion to  
16 strike, as well as a response to the motion for audit.

17 COMMISSIONER DEASON: I'll let you reserve that if,  
18 if it becomes germane.

19 MS. MASTERTON: Okay. Thank you. That's all I have  
20 then. Thank you.

21 COMMISSIONER DEASON: Mr. Self.

22 MR. SELF: Thank you, Commissioners. Floyd Self  
23 representing the three KMC companies.

24 If Sprint's alleging that KMC is guilty of filing  
25 claims and counterclaims that are highly prejudicial against

1 Sprint-Florida and Sprint Limited Partnership, then, yes, we're  
2 guilty of doing that. We've done that not for purposes of  
3 harassment or for delay, but because if given our day in court,  
4 we're going to prove that they're true. And that's what  
5 today's question is all about, whether it's a time for  
6 ascertaining the truth of the allegations by both parties, each  
7 against the other, that the other unlawfully converted access  
8 traffic to local traffic.

9           The real question you have to ask yourselves is where  
10 do you want to end up with the allegations that are being made  
11 by the parties against each other? Do you want to deal with  
12 this one time in one proceeding or do you want to do it twice?  
13 We believe it's appropriate to do it once because the unfair  
14 prejudice that exists is not with respect to Sprint but with  
15 respect to KMC.

16           So let me look first at whether or not this is the  
17 same transaction or occurrence.

18           The underlying issues involve the same  
19 interconnection arrangement, excuse me, the same  
20 interconnection agreements, the same local trunks, it's the  
21 same statutory provision at issue in both cases, it involves  
22 fundamentally the same time period, the same legal questions,  
23 the same network arrangements, and at least with respect to  
24 Tallahassee and Fort Myers for Sprint-Florida and for Sprint LP  
25 it's the same market. And the basic allegations are true with



1 respect to the conversion of toll and access minutes to local  
2 traffic.

3           Is it appropriate to include both of the Sprint  
4 companies in this case? We certainly recognize that they are  
5 separately chartered corporate entities, but they have the same  
6 control and ownership. It's important to note that Sprint  
7 filed its complaint against the three KMC companies even though  
8 Sprint's own analysis shows that only one of the three  
9 companies really is involved in any of the traffic that's at  
10 issue. We asked you to dismiss KMC data in KMC 5, and on that  
11 request you denied it and kept both of them in, even though  
12 these companies have no customers in Florida.

13           And finally at least again with respect to  
14 Tallahassee and Fort Myers, you should allow the claims to  
15 proceed against both companies.

16           Turning to prejudice, the real issue is not whether  
17 or not these pleadings are prejudicial, but whether there's any  
18 unfair prejudice that's occurring by virtue of the complaints  
19 that KMC has filed. It's important to note that what KMC,  
20 excuse me, what Sprint is ultimately seeking in these  
21 proceedings is simply, to put it in more traditional legal  
22 terms, they're looking for money damages. They're looking  
23 certainly for an accounting to reconcile and receive  
24 compensation for access charges, but the bottom line is they  
25 want money. There's no ongoing problem that they're really

1 complaining about. The traffic -- there may be some incidental  
2 traffic which we've asserted is really call forward traffic and  
3 it exists probably on every network by every carrier in  
4 Florida. So a delay in this case in order to allow our claims  
5 to proceed doesn't really fundamentally change. If they're  
6 right, at the end of the day they get money. And perhaps the  
7 only difference in all of that is they might get a little more  
8 interest out of it.

9           It's important to note, too, that the minutes at  
10 issue with respect to Sprint's claims as KMC has asserted  
11 involve only one customer. It does not involve all of the  
12 traffic. On the other hand, the unfair prejudice with respect  
13 to KMC involves an issue involving Sprint-Florida and Sprint LP  
14 that's continuing and ongoing. In some markets it involves the  
15 conversion of all access minutes to local minutes.

16           The bottom line is Sprint took a year before they  
17 filed their complaint against KMC. In that time they hired  
18 outside experts. And, in fact, if you follow Ms. Masterton's  
19 arguments today, they had access to all of the data going all  
20 the way back to June 2002, and yet by their own reckoning they  
21 didn't discover this problem until over a year later and they  
22 waited over a year before they filed a complaint, and they went  
23 out and had to hire experts in order to do that. We don't deny  
24 that some of this data was, in fact, in the company's  
25 possession, but a lot of the data like with respect to Sprint's

1 own claims against KMC is data that you don't routinely in the  
2 course of business analyze and look at, and certainly not for  
3 the purposes that underlie the claims that are being made here.

4           So finally we have to look at efficiency, and we have  
5 to look at efficiency not just with respect to the litigation,  
6 but to the audit itself. The FCC has said in the AT&T  
7 declaratory ruling involving enhanced services providers that  
8 it's the IXC that should pay any access charges that are due,  
9 not the CLEC. We believe that any delay that may be occasioned  
10 by allowing these claims of KMC to proceed would only push the  
11 case out a couple of months and only time for some supplemental  
12 discovery and supplemental testimony. And you'd still, even in  
13 that situation, would be having a hearing in all likelihood  
14 within a year of the time that Sprint filed its complaint  
15 against KMC. Even if it's later this fall, say December,  
16 before you could have the hearing in this case, that would  
17 certainly provide sufficient time for supplemental testimony,  
18 additional discovery and even the audit request. And that does  
19 not impose the same kind of delay as what Sprint's motion would  
20 do with respect to KMC in terms of pushing out a separate KMC  
21 proceeding in all likelihood until late 2006 or early 2007.

22           With respect to our request for an audit --

23           COMMISSIONER DEASON: Mr. Self, why didn't you file  
24 your claim earlier then?

25           MR. SELF: Part of the problem, Commissioner, was

1 that in investigating the allegations that Sprint had made  
2 against KMC, like I said, a lot of this data is not the stuff  
3 that you routinely look at in the course of doing business. So  
4 as we were analyzing the local trunks in Tallahassee and in  
5 Fort Myers attempting to ascertain what happened and why with  
6 respect to this issue, we discovered that Sprint LP had  
7 basically during that period of time stopped sending traffic to  
8 KMC in those markets. And so as you follow the trail of bread  
9 crumbs here, it's sort of widened and expanded beyond  
10 Sprint-Florida in Tallahassee and Fort Myers to include  
11 Sprint LP in Tallahassee and Fort Myers, and then ultimately we  
12 looked at all of the KMC markets in Florida and found this  
13 problem present in all but one of the markets, which, as we say  
14 in the pleadings, there's some even more screwy things going on  
15 there that we don't yet still fully understand what happened  
16 and why, which is why we didn't include that as well. So we  
17 were trying --

18 COMMISSIONER DEASON: How are you disadvantaged if  
19 you just found this information and it's a complaint that just  
20 goes on its own path? How is that -- you already said that  
21 it's just money damages and, if you prevail, you'll recover  
22 interest.

23 MR. SELF: Well, I think there's a couple of  
24 important distinctions. One is the fact that -- let's assume  
25 hypothetically that Sprint is correct about all of this, and

1 KMC may be in the position of, of being required to pay money  
2 to Sprint sometime later this year, early next year. The legal  
3 issues, the factual issues, the network issues, the  
4 interconnection agreements, the statutory issues could be  
5 prejudiced by a decision in that case. If you deal with all of  
6 those legal and factual questions in one proceeding, you get  
7 both sides and all of the evidence that's in that's relevant on  
8 those issues. If you separate us out --

9           COMMISSIONER DEASON: I understand. The law is the  
10 law. The law that we would determine is applicable in that  
11 complaint we're not going to change -- the law is not going to  
12 change from the time your complaint gets in front of us, is it?

13           MR. SELF: Commissioner, I agree with you  
14 fundamentally. But we say all the time that bad facts makes  
15 for bad law. And how you interpret and construe statutes and  
16 apply them, there's always a factual element in there that,  
17 that potentially can lead to mischief. I've seen it happen in  
18 other proceedings, which is why you often in, for example,  
19 arbitrations will sometimes end up with other parties  
20 attempting to jump in and participate. I can think of the hot  
21 cuts case, for example, with Supra and the issues there. You  
22 know, one of the reasons that got filed was because of the  
23 concern that even though the law is the law, how it's applied  
24 sometimes and interpreted, the facts will have an impact on  
25 that.

1           The other thing is you're asking us basically to  
2 litigate the case twice, and the cost for doing that and  
3 putting off our day of justice is potentially, you know, in all  
4 likelihood, a year and a half or so from now. And in essence a  
5 lot of the claims may prove to be offsetting to each other. So  
6 rather than forcing us to pay out money now, assuming Sprint's  
7 right, and you go downstream and the reverse may be true,  
8 Sprint may owe KMC money and that may have the effect of  
9 offsetting each other, but in the meantime we've incurred the  
10 cost of a second, in some respects duplicative proceeding.

11           COMMISSIONER DEASON: Sounds like a good case to  
12 settle to me.

13           MR. SELF: Well, that's always an option and parties  
14 do talk.

15           COMMISSIONER BRADLEY: Mr. Chairman.

16           COMMISSIONER DEASON: Commissioner Bradley.

17           COMMISSIONER BRADLEY: You know, I think in order to  
18 give the issue due diligence it probably needs to be bifurcated  
19 and separated, well, separated out, that is. I think that  
20 maybe KMC is assuming that, that, that based upon the facts  
21 that we have available to us, that they, they might prevail,  
22 but that may not be the case. And I'm just concerned that,  
23 that if we combine the two at this point, that we may not have  
24 before us adequate facts in order to make a valid determination  
25 as to what really needs to -- what the outcome should be and

1 what the costs and what the issues are if, at this point if we  
2 combine the two. Adequacy is an issue, and adequacy of outcome  
3 based upon the facts that, that would be put before us if we  
4 combine the two dockets. It just seems to me to be, that it  
5 would be much cleaner if we kept the two separate, but I will  
6 go with the ruling majority.

7 COMMISSIONER DAVIDSON: Chairman, I've got a question  
8 for KMC, if you don't mind.

9 COMMISSIONER DEASON: Sure.

10 COMMISSIONER DAVIDSON: If KMC had to make this  
11 choice, without a lot of discussion, just tell me what the  
12 choice would be: Prosecute the counterclaims that you have  
13 within the hearing schedule set here, no delays; if you've got  
14 claims based on the evidence, you prosecute them; the evidence  
15 is out there; the Commission would hear the claims; or  
16 prosecute your claims in a separate proceeding.

17 MR. SELF: That's an easy choice. We'd prosecute  
18 here. We already filed the evidence with respect to our claims  
19 against Sprint and our direct testimony that was filed two  
20 months or so ago. Sprint has not answered that in the rebuttal  
21 testimony. In fairness to Sprint, you should probably give  
22 them a couple of weeks to do that. But if you gave them two,  
23 even three weeks to file rebuttal testimony, you could probably  
24 still keep the exact same hearing date.

25 COMMISSIONER DAVIDSON: Ms. Masterton.

1 MS. MASTERTON: I mean, I suppose my choices would be  
2 do it within the existing schedule or -- obviously we would  
3 prefer -- a separate proceeding or delay this proceeding;  
4 right? I mean, those would be the choices you're asking. I  
5 mean, between those two we would prefer to do it within the  
6 existing schedule. I mean, our first preference would be to  
7 separate it because we think it needs more time.

8 I just wanted to respond to a comment that Floyd  
9 made. Yes, Sprint took a year to file its complaint. But it  
10 had approached KMC with its claims at least in November of  
11 2003, filed its complaint in September of 2004. KMC, by its  
12 own admission, never apprised Sprint or Sprint LP of its claims  
13 until it filed its counterclaims on February 28th. So we have  
14 never even had discussions with KMC about the complaint, what  
15 the data they've provided might mean or anything of that  
16 nature.

17 COMMISSIONER DAVIDSON: And in Sprint's view are  
18 KMC's counterclaims, like Sprint's claims here, are simply ones  
19 for money damages?

20 MS. MASTERTON: Yes. I mean, it's for money, yes.

21 COMMISSIONER DAVIDSON: All right. That's all I  
22 have, Mr. Chairman.

23 COMMISSIONER DEASON: Well, Mr. Self, you expired  
24 your five minutes. But if you need to wrap up, I'll give you  
25 30 seconds to do it because we kind of interrupted you with



1 questions.

2 MR. SELF: I appreciate that, Commissioner. I guess  
3 the last thing I didn't speak to was, was the audit, and we

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15 future -- of a precedent to be used in the future, and how much  
16 of a drain is that going to be upon our existing staff  
17 resources as it relates to our ability to, to audit and to get  
18 good information in order to make good decisions? **That's**  
19 another issue.

20 But I want to make sure that I heard what, what  
21 Sprint's answer was because I -- did I understand you very  
22 clearly to say that you would be against bifurcating?

23 MS. MASTERTON: No. No. We -- our motion was to  
24 strike and allow it to be dealt with in a separate proceeding.  
25 I think Commissioner Davidson was saying if we had to choose

1 between doing it within the time -- if you all decided to keep  
2 it in this proceeding, if we had to choose between doing it  
3 within the current time frames or having more time, which would  
4 we prefer? Am I correct, Commissioner Davidson?

5 COMMISSIONER DAVIDSON: Yes.

6 MS. MASTERTON: And we would rather stay within the  
7 time frames of the current proceeding with those choices. But  
8 our first preference is to have it addressed, and we think it  
9 can only really properly be addressed in a separate proceeding.

10 COMMISSIONER BRADLEY: I'd like to have staff maybe  
11 respond to that in terms of the time frame and --

12 COMMISSIONER DAVIDSON: And if you could also  
13 summarize what your recommendation was on Issue 2.

14 MS. KEATING: Certainly, Commissioner. Ultimately  
15 when staff was looking at the allegations in the counterclaim,  
16 to us they look to be quite similar, but at the end of the day  
17 they represent to us a different case. Whereas, they may call  
18 into question Sprint-Florida, it looks to us like it would also  
19 require that potentially other parties be brought in. KMC  
20 states in its counterclaim that this calls into question  
21 different traffic. Sprint has indicated that this might  
22 require looking at traffic that goes outside Sprint-Florida's  
23 territory. Ultimately we think this just, while it looks real  
24 similar, is a different case. So we're -- our primary concern  
25 about proceeding in this time frame is that at this point in

1 the case it would be difficult -- we're not sure the record is  
2 complete and we think that it would require additional  
3 discovery, potentially adding some new issues to the case to  
4 more specifically address KMC's allegations in its counterclaim  
5 and, again, potentially bringing in other parties. That's  
6 staff's understanding of, of what's before it now. That's not  
7 to say that it can't be done. If the Commission prefers to  
8 proceed, then we will certainly make every effort to make sure  
9 that it proceeds smoothly, but those are staff's concerns.

10 COMMISSIONER DEASON: Well, doesn't KMC have the  
11 burden to -- or is it once the accusation is made, the burden  
12 shifts? Who has the burden to prove that they have been  
13 flowing the traffic correctly and have been representing  
14 traffic for what it is and that the correct payments have been  
15 made? Who has the burden?

16 MS. KEATING: KMC, as I understand it, would have the  
17 initial burden of proof.

18 COMMISSIONER DEASON: As far as their counterclaim.  
19 And Sprint has the initial burden of proof as far as their  
20 claim.

21 MS. KEATING: Yes, Commissioner.

22 COMMISSIONER DEASON: And to the extent there's not  
23 going to be an audit and to the extent that it's got to go  
24 forward with the current hearing schedule, it seems to me that  
25 KMC has less time to get their ducks in a row to prove their

1 burden, do they not? But they're willing to take that on is  
2 what I understand Mr. Self to say.

3 It's not staff's problem. If the record is not  
4 complete, they haven't met their burden. I don't think it's --  
5 I don't want you to feel like it's your burden to complete the  
6 record. Am I -- what is your perspective?

7 MS. KEATING: We appreciate that, Commissioner. I --  
8 staff, of course, as you know, attempts to try to make sure  
9 that the record is as complete as possible so that the  
10 Commissioners can have every option available to them  
11 ultimately when you are presented with issues for your  
12 decision. But certainly we appreciate --

13 COMMISSIONER DEASON: And I appreciate you going to  
14 some extent that extra mile to make sure the record is  
15 complete. But if time doesn't permit and you don't have the  
16 information to do it within the time period, I don't think it's  
17 a failure on your part. If there's a failure, it's a failure  
18 on the party, of the person, entity that has the burden. If  
19 they don't meet the burden, they don't get the relief they  
20 claim or seek.

21 COMMISSIONER BRADLEY: Let me ask this question.  
22 Do we need to officially determine that we don't have  
23 the resources and time, don't have the time to do an audit and  
24 take that off the table?

25 COMMISSIONER DEASON: That's Issue 3. You know, if,

1 if the Commission wishes to take that issue up before Issue 2,  
2 I'm amenable to that.

3 COMMISSIONER DAVIDSON: I actually had, it may be  
4 worthwhile, a couple of additional questions for KMC on this,  
5 sort of taking into consideration staff's comments and the  
6 comments of the Commission.

7 Would KMC agree that if it proceeded in this docket  
8 on this case, no new parties will be added? Now is not the  
9 time to sort of have to bring in new parties into a case.  
10 We've got an existing case between certain parties. So that's  
11 one issue.

12 MR. SELF: Do you mean other than Sprint-Florida and  
13 Sprint LP?

14 COMMISSIONER DAVIDSON: Other than the parties who  
15 are already in the case. Other than parties who are already in  
16 the case. No new parties.

17 MR. SELF: So you're saying it would just be  
18 Sprint-Florida?

19 COMMISSIONER DAVIDSON: Right. And KMC.

20 MR. SELF: Can I consult for a moment or do you want  
21 to pitch a couple more at me?

22 COMMISSIONER DAVIDSON: Sure. And the other question  
23 is, and the other question is would KMC also agree that if  
24 proceeded (phonetic), it's not going to be discussing traffic  
25 that's outside the territory of the case that's before us.

1 MR. SELF: So you would just limit it to Tallahassee  
2 and Fort Myers?

3 COMMISSIONER DAVIDSON: Right. Uh-huh.

4 MR. SELF: May I consult for a moment?

5 (Pause.)

6 MR. SELF: Okay. Commissioner, so if your question  
7 is if we proceed just against Sprint-Florida, not Sprint LP,  
8 would KMC be willing to do that on the same hearing schedule,  
9 and the answer to that question is yes.

10 COMMISSIONER DAVIDSON: Well, are you then going to  
11 have a separate case against Sprint LP?

12 Okay. I see, I see your principal nodding her head.  
13 So, I mean, that answers the question for me. I mean, on  
14 this -- Chairman, I mean, Ms. Keating's point sort of resonated  
15 with me that we are talking about a different case. I mean, we  
16 just -- in my view we can't have sort of multiple bites at the  
17 apple I was getting at. If we sort of did everything here  
18 within the confines of the case in chief, would that take care  
19 of it? And what I'm hearing is that, well, we would proceed  
20 with part of it here, but then we'd still want another bite at  
21 the apple later on. And perhaps now is the right time. I  
22 mean, I'd be interested in sort of hearing everyone's thoughts.  
23 Perhaps now is the right time to sort of get it all resolved.  
24 But as Ms. Keating pointed out, there are going to likely be  
25 new parties, potentially different traffic considered. Sort of

1 it broadens the scope on the eve of trial, so to speak.

2 Often times in cases, I mean, based on the evidence  
3 before a party can assert a counterclaim or an affirmative  
4 defense, something, and the trial judge will allow it to come  
5 in on the eve of trial. But it's based on sort of the parties  
6 before the court and the evidence before the court. It doesn't  
7 extend the trial schedule and result in greater discovery. So  
8 those are just some of my thoughts.

9 MR. SELF: Commissioner Deason, if I could just  
10 clarify one thing. You should understand that a possible  
11 outcome of just the Sprint complaint against KMC may well be  
12 that the remedy lies with a different customer or carrier. So,  
13 I mean, that -- forget KMC's claims entirely. That's a  
14 potential outcome of the Sprint complaint against KMC.

15 COMMISSIONER DEASON: Commissioners, further  
16 questions or a motion?

17 COMMISSIONER BRADLEY: Is that a motion?

18 COMMISSIONER DAVIDSON: Well, I mean, I'm prepared to  
19 make -- I'm prepared to move staff on Issue 2.

20 COMMISSIONER BRADLEY: Okay. But -- okay. But based  
21 upon what you just discussed, how does that affect the  
22 substance of Issue 2?

23 COMMISSIONER DAVIDSON: Well, staff, if I move --  
24 staff, if you can repeat sort of one more time what I would be  
25 moving so the record is clear.

1 MS. KEATING: If the Commission approves staff's  
2 recommendation on Issue 2, then only KMC's counterclaim will be  
3 stricken from this proceeding, with leave to refile as a  
4 separate, independent complaint.

5 COMMISSIONER BRADLEY: Okay. I thought that you were  
6 trying to work out a compromise, but I'll second your motion.

7 COMMISSIONER DEASON: Yeah. I think the compromise  
8 fell through.

9 Okay. There's been a motion and a second to approve  
10 staff on Issue 2. All in favor, say aye.

11 (Unanimous affirmative vote.)

12 COMMISSIONER DEASON: Show that Issue 2 is approved.

13 We're now on Issue 3. Questions concerning the  
14 potential staff audit or a motion?

15 COMMISSIONER DAVIDSON: Move staff on Issue 3.

16 COMMISSIONER BRADLEY: Second.

17 COMMISSIONER DEASON: Moved and seconded. All in  
18 favor, say aye.

19 (Unanimous affirmative vote.)

20 COMMISSIONER DEASON: Show that Issue 3 is approved.

21 And Issue 4, staff's recommendation is to keep the  
22 docket open.

23 COMMISSIONER DAVIDSON: Move staff.

24 COMMISSIONER BRADLEY: Second.

25 COMMISSIONER DEASON: Moved and seconded. All in



favor, say aye.

(Unanimous affirmative vote.)

3 COMMISSIONER DEASON: Show that Issue 4 is approved.

4 And I would urge the parties, if we're talking about  
5 money damages and potential money flows in two different  
6 directions, it seems to me, and potential for an additional  
7 claim being filed, that it might could all be settled and  
8 wrapped up in a neat little bow and sent to the Commission. Or  
9 just you could settle it among yourselves and withdraw your  
10 complaint; that would even be better.

11 COMMISSIONER BRADLEY: Yeah, it would be.

12 (Agenda Item 11 concluded.)

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1 STATE OF FLORIDA        )  
                                  :  
2 COUNTY OF LEON         )                    CERTIFICATE OF REPORTER

3  
4                I, LINDA BOLES, RPR, Official Commission  
5 Reporter, do hereby certify that the foregoing proceeding was  
6 heard at the time and place herein stated.

7                IT IS FURTHER CERTIFIED that I stenographically  
8 reported the said proceedings; that the same has been  
9 transcribed under my direct supervision; and that this  
10 transcript constitutes a true transcription of my notes of said  
11 proceedings.

12               I FURTHER CERTIFY that I am not a relative, employee,  
13 attorney or counsel of any of the parties, nor am I a relative  
14 or employee of any of the parties' attorneys or counsel  
15 connected with the action, nor am I financially interested in  
16 the action.

17               DATED THIS 3rd day of MAY, 2005.

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19                 
20               \_\_\_\_\_  
21               LINDA BOLES, RPR  
22               FPSC Official Commission Reporter  
23               (850) 413-6734  
24  
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