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Timolyn Henry

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**Sent:** Tuesday, June 07, 2005 4:49 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** 041144-TP Sprint's Prehearing Statement and Motion to file one day out of time.  
**Attachments:** 041144-TP Sprint's Motion and Prehearing Statement.doc

**Filed on behalf of:**

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**Docket No. 041144-TP**

**Title of filing:** 041144-TP Sprint's Prehearing Statement and Motion to file one day out of time.

**Filed on behalf of: Sprint**

**No. of pages:** 11

**Description:** 041144-TP Sprint's Prehearing Statement and Motion to file one day out of time.

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DOCUMENT NUMBER-DATE  
05500 JUN-7 '05  
FPSC-COMMISSION CLERK

ORIGINAL

June 7, 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. 041144-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint-Florida, Incorporated is Sprint's Motion to Accept filing one day out of time and Sprint's Prehearing Statement.

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,

S/ Susan S. Masterton

Susan S. Masterton

Enclosure

DOCUMENT NUMBER-DATE  
05500 JUN-7 05  
FPCD COMMISSION CLERK

**CERTIFICATE OF SERVICE  
DOCKET NO. 041144-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic and U.S. mail this 7<sup>th</sup> day of June, 2005 to the following:

Division of Legal Services  
Lee Fordham/ Beth Keating  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Nancy Pruitt/Ann Marsh  
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/Mike Duke  
1755 North Brown Road  
Lawrenceville, GA 30043-8119

Kelley Drye & Warren LLP  
Chip Yorkgitis / Barbara Miller  
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

S/ Susan S. Masterton  
Susan S. Masterton

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Sprint-Florida, Incorporated ) Docket No. 041144-TP  
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 ) Filed: June 7, 2005  
Section 364.16(3)(a), Florida Statutes. )

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**SPRINT-FLORIDA, INCORPORATED'S MOTION  
TO ACCEPT PREHEARING STATEMENT ONE DAY OUT OF TIME**

Sprint-Florida, Incorporated ("Sprint") hereby files this Motion requesting that the Commission accept Sprint's Prehearing Statement, which has been filed electronically this day with the Commission Clerk, one day out of time. In support of this Motion Sprint states as follows:

1. Prehearing statements in this docket were due to the Commission by 5:00 p.m. on June 6, 2005. Sprint's counsel has been out of town and in her absence Sprint inadvertently overlooked filing the Prehearing Statement. Immediately upon Sprint's counsel returning to the office and discovering the error, Sprint has filed electronically its Prehearing Statement with the Commission and served the parties with a copy of its Prehearing Statement via electronic mail.
2. The prehearing conference is scheduled for June 20, 2005. Given the amount of time until the prehearing conference, no party will be prejudiced by the filing of Sprint's Prehearing Statement one day late. Sprint has contacted counsel for KMC regarding this Motion and he has indicated that KMC does not object.

DOCUMENT NUMBER-DATE

05500 JUN-7 05

FILED-COMMISSION CLERK

Wherefore, for the above reasons, Sprint requests that the Commission grant this Motion and accept for filing one day out of time Sprint's Prehearing Statement in this docket.

Respectfully submitted this 7<sup>th</sup> day of June 2005.

*S/ Susan S. Masterton*

Susan S. Masterton

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ATTORNEY FOR  
SPRINT-FLORIDA, INCORPORATED

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Complaint of Sprint-Florida, Incorporated ) Docket No. 041144-TP  
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. ) Filed: June 7, 2005  
\_\_\_\_\_ )

**SPRINT-FLORIDA, INCORPORATED'S**  
**PREHEARING STATEMENT**

SPRINT-FLORIDA, INCORPORATED ("Sprint" or the "Company"), pursuant to Order No. PSC-05-0125-PCO-TP and Order No. 05-0402-PCO-TP, submits the following Prehearing Statement:

**A. WITNESSES:** Sprint has prefiled the testimony of the following witnesses:

Ritu Aggarwal	Direct and Rebuttal <sup>1</sup>
James A. Burt	Direct and Rebuttal
Mitchell S. Danforth	Direct
Christopher M. Schaffer	Direct and Rebuttal
William L. Wiley	Direct and Rebuttal

**B. EXHIBITS:** Sprint has prefiled the following exhibits:

Exhibit KJF-1	KMC Complaint Summary (CONFIDENTIAL)
Exhibit KJF-3	Access Compensation Due (CONFIDENTIAL)
Exhibit RA-1	Reallocated MOU (CONFIDENTIAL) <sup>2</sup>
Exhibit RA-2	KMC Billing Summary (CONFIDENTIAL)

<sup>1</sup> Ritu Aggarwal is adopting the Direct Testimony of Kenneth A. Faman.

<sup>2</sup> As stated in Ms. Aggarwal's Rebuttal Testimony, Sprint plans to introduce Exhibit RA-1 in lieu of KJF-2.

Exhibit JRB-1	Parts of KMC's Supp Res to Sprint's ROG 15, POD 5 CONFIDENTIAL
Exhibit JRB-2	Sprint Customer Call Examples (CONFIDENTIAL)
Exhibit MSD-1	Reciprocal Compensation Expense Overpayment Calculation (CONFIDENTIAL)
Exhibit CMS-1	KMC's Corporate Structure from Docket No. 020143-TP
Exhibit CMS-2	LERG Screen Prints
Exhibit CMS-3	ARMS Order (CONFIDENTIAL)
Exhibit CMS-4	Analysis of KMC provided SS7 Records
Exhibit WLW-1	Agilent BI Overview and Rev. Assurance Overview
Exhibit WLW-2	Access Bypass Study Results (CONFIDENTIAL)
Exhibit WLW-3	Agilent CDRs (CONFIDENTIAL CD only)
Rev. Exhibit WLW-4	Brian K. Staihr Affidavit
Rev. Exhibit WLW-5	KMC-Random Sample CDRs (CONFIDENTIAL CD only)
Exhibit WLW-6	KMC Interconnection and Transport to Customer X
Exhibit WLW-7	Company X switch (Gateway) Location

Sprint reserves the right to introduce exhibits at the hearing as necessary to present its case and for cross-examination purposes.

C. **BASIC POSITION:** KMC has engaged in systematic, continuous and intentional actions to avoid paying Sprint access charges rightfully due Sprint for interexchange traffic transported to Sprint by KMC and terminated by Sprint to Sprint end users. KMC has knowingly terminated interexchange traffic over its local interconnection arrangements with Sprint. KMC's actions violate the terms of its

interconnection agreements with Sprint, Sprint's tariffs and section 364.16(3)(a), Florida Statutes.

**D-F. ISSUES AND POSITIONS:**

**ISSUE 1: What is the Florida Public Service Commission's jurisdiction to address all or part of this complaint?**

**Sprint's Position:** The Commission has jurisdiction to address Sprint's Complaint pursuant to sections 152, 251 and 252 of the Telecommunications Act of 1996 and pursuant to sections 364.01, 364.16, 364.162 and 364.163, Florida Statutes.

**ISSUE 2: Are KMC Data LLC and KMC Telecom V, Inc. properly included as parties to this complaint?**

**Sprint's Position:** Yes. All three entities are parties to applicable interconnection agreements with Sprint. In addition, KMC III and KMC V have engaged in specific actions related to the improper and unlawful delivery by KMC of access traffic for termination to Sprint end users over KMC's local interconnection trunks with Sprint.

**ISSUE 3: Under the Interconnection Agreements with KMC or Sprint's tariffs, is Sprint required to conduct an audit as a condition precedent to bringing its claims against KMC or for KMC to be found liable?**

**Sprint's Position:** No. Neither Sprint's interconnection agreements nor Sprint's tariffs require that Sprint to conduct an audit as a condition precedent to pursuing its claims against KMC.

**ISSUE 4: What is the appropriate method to determine the jurisdictional nature and compensation of traffic?**

**Sprint's Position:** The jurisdictional nature and applicable compensation for the traffic delivered by KMC to Sprint for termination to Sprint end users should be based on the

end points of the calling and called parties. As demonstrated by the evidence presented by Sprint in its testimony and exhibits, the calls that are the subject of Sprint's Complaint originate from end user customers outside the local calling area of the Sprint end users to whom the calls are terminated. And, even if KMC's Customer X is considered *arguendo* to be the KMC end user from which the calls originate, the calls are jurisdictionally interexchange calls for which access charges are due.

**ISSUE 5: Did KMC knowingly deliver interexchange traffic to Sprint over local interconnection trunks in violation of Section 364.16(3)(a), Florida Statutes? If yes, what is the appropriate compensation and amount, if any, due to Sprint for such traffic?**

**Sprint's Position:** Yes. As demonstrated by the evidence presented by Sprint in its testimony and exhibits and in discovery responses from KMC, KMC knowingly received access traffic from its Customer X, inserted a charge party number local to the local calling area where the calls were terminated to Sprint's end users (even though neither the calling parties nor Customer X were physically located in these local calling areas) and sent this access traffic over its local interconnection trunks with Sprint to avoid access charges in violation of Section 364.16(3)(a), Florida Statutes. The appropriate compensation due Sprint for this traffic is the access charges that should have been paid, minus any reciprocal compensation payments. Sprint has determined that \$3,466,521 is due through March 2005.

**ISSUE 6: Was any of the traffic that is the subject of Sprint's complaint enhanced services traffic? If yes, how is enhanced services traffic delivered to Sprint from KMC to be treated under the Interconnection Agreements, Sprint's tariffs, and applicable law?**

**Sprint's Position:** Sprint has no way of distinguishing enhanced services traffic from any other voice traffic it receives over local interconnection trunks. Billing records that Sprint has examined for certain calls originated and terminated to Sprint end users show that the traffic that is the subject of Sprint's Complaint is not enhanced services traffic, but is plain old voice telecommunications traffic. While KMC has alleged that the traffic is enhanced services or VoIP traffic, KMC has presented no evidence to show that the traffic is truly enhanced services traffic. And, even if the internet protocol is used at some point in the routing of the call, pursuant to the *AT&T Declaratory Ruling*, the traffic is telecommunications traffic for which applicable access charges are due.

**ISSUE 7:** **Was KMC required to pay Sprint its tariffed access charges for the traffic that is the subject of this complaint? If yes, what is the appropriate amount, if any, due to Sprint for such traffic?**

**Sprint's Position:** Yes. Since the traffic KMC terminated to Sprint is interexchange traffic, KMC is required to pay access charges to Sprint for this traffic. Sprint has determined that \$3,466,521 is due through March 2005.

**ISSUE 8:** **Did KMC deliver interexchange traffic to Sprint over local interconnection trunks in violation of the terms of the Interconnection Agreements with Sprint? If yes, what is the appropriate amount, if any, due to Sprint for such traffic?**

**Sprint's Position:** Yes. The parties' interconnection agreements require local and interexchange traffic to be terminated over separate trunks. Each party is responsible for ensuring that it complies with terms of the interconnection agreements. The traffic that is the subject of Sprint's Complaint is interexchange traffic, that KMC wrongfully terminated over its local interconnection trunks with Sprint, in violation of the applicable interconnection agreements. Sprint has determined that \$3,466,521 is due through March 2005.

**ISSUE 9:** To what extent, if any, is Sprint's backbilling limited by its Interconnection Agreements with KMC, Sprint's tariffs, or other applicable law?

**Sprint's Position:** Sprint's backbilling is limited, if at all, by the applicable statutes of limitations.

**ISSUE 10:** Did Sprint overpay reciprocal compensation to KMC? If yes, what is the appropriate refund, if any, due to Sprint?

**Sprint's Position:** Yes. By sending non-local access minutes to Sprint over local facilities, KMC inflated the amount of local or "voice" traffic, and, as a result, Sprint overpaid reciprocal compensation by three times for the minutes of use that KMC incorrectly routed in this fashion. Because the contractual local or "voice" rates are substantially higher than the ISP-bound traffic rates, Sprint overpaid by that rate differential multiplied by the number of minutes that were sent incorrectly as if they were local or "voice" traffic. Sprint has overpaid KMC at least \$741,396 in reciprocal compensation as a result of sending access traffic to Sprint over local facilities.

**ISSUE 11:** If the Commission determines that KMC owes Sprint compensation for any traffic delivered by KMC to Sprint that is the subject of this complaint or refunds for overpayment of reciprocal compensation, what are the appropriate payment arrangements?

**Sprint's Position:** KMC should be required to pay Sprint within ten days of the Commission's final order all monies determined to be due to Sprint.

**G. STIPULATIONS:** Sprint is not aware of any pending stipulations at this time.

**H. PENDING MOTIONS:** Sprint has the following motions pending:

Motion to Accept Filing of Prehearing Statement One Day Out of Time

In addition, KMC has the following motions pending;

KMC's Motion to Compel Response to First Set of Interrogatories and Second PODs

KMC's Motion to Compel Response to Third Set of Interrogatories and Fourth PODs

**I. PENDING CONFIDENTIALITY REQUESTS:** Sprint has the following

Requests for Confidential Classification Pending:

Sprint's Request for Confidential Classification for Document No. 04562-05, filed 5/31/05

**J. COMPLIANCE WITH ORDER ON PREHEARING PROCEDURE:**

The Company does not know of any requirement of the Order on Prehearing Procedure with which it cannot comply.

**K. OBJECTIONS TO WITNESS' QUALIFICATIONS:** The Company has no objections to a witness' qualifications as an expert.

Respectfully submitted this 7th day of June 2005.

*S/ Susan S. Masterton*  
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