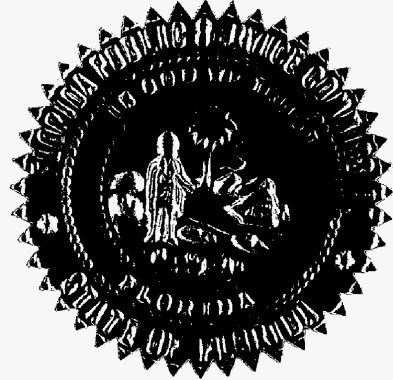


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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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THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: PREHEARING

BEFORE: COMMISSIONER RUDOLPH "RUDY" BRADLEY  
Prehearing Officer

DATE: Monday, June 20, 2005

TIME: Commenced at 1:40 p.m.  
Concluded at 1:55 p.m.

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

REPORTED BY: JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
(850) 413-6732

1 PARTICIPATING:

2 EDWARD YORKGITIS, JR., ESQUIRE, Kelley Drye & Warren  
3 LLP, 1200 19th Street, N.W., Fifth Floor, Washington,  
4 State: DC 20036, appearing on behalf of KMC Data LLC, KMC  
5 Telecom III LLC, and KMC Telecom V, Inc.

6 FLOYD R. SELF, ESQUIRE, Messer, Caparello & Self,  
7 P.A., P. O. Box 1876, Tallahassee, Florida 32302-1876,  
8 appearing on behalf of KMC Data LLC, KMC Telecom III LLC, and  
9 KMC Telecom V, Inc.

10 SUSAN MASTERTON, ESQUIRE, Sprint-Florida,  
11 Incorporated, P.O. Box 2214, Tallahassee, Florida 32316-2214,  
12 appearing on behalf of Sprint-Florida, Incorporated.

13 BETH KEATING, ESQUIRE, and LEE FORDHAM, ESQUIRE, FPSC  
14 General Counsel's Office, 2540 Shumard Oak Boulevard,  
15 Tallahassee, Florida 32399-0850, appearing on behalf of the  
16 Florida 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 BRADLEY: Good afternoon. I would like  
3 to call this prehearing conference to order.

4 Could I have the notice read.

5 MS. KEATING: Yes, sir. Pursuant to notice issued  
6 May 24th, 2005, this time and place have been set for a  
7 prehearing conference in Docket Number 041144. The purpose is  
8 as set forth in the notice.

9 COMMISSIONER BRADLEY: Thank you.

10 Are there any preliminary matters?

11 MS. KEATING: No, sir, there are no preliminary  
12 matters that staff is aware of other than perhaps the taking of  
13 appearances.

14 COMMISSIONER BRADLEY: Okay. We are going to proceed  
15 through the draft prehearing order section-by-section. If  
16 there are any questions, or clarifications, or changes, or  
17 anything to be called to my attention, please let me know when  
18 we reach that section. To preserve the record, I'm going to  
19 ask each party to provide an oral response to each section. It  
20 can just be no changes, or, a, no changes.

21 I have a draft prehearing order provided to me by my  
22 office on June 10th, 2005. Does everyone have a copy?

23 MS. KEATING: Yes, sir, everyone should.

24 COMMISSIONER BRADLEY: Does everyone have a copy?

25 Thank you. We will begin with Section I, the conduct

1 of proceedings.

2 MS. MASTERTON: This is Susan Masterton representing  
3 Sprint-Florida, Incorporated. I'm okay with what is in there  
4 on that one.

5 MR. SELF: Commissioner Bradley, this is Floyd Self  
6 on behalf of KMC. Section I is fine with me. In fact, I have  
7 no changes at all until Section VI.

8 COMMISSIONER BRADLEY: Okay. Well, just for the  
9 record, we will go section-by-section, and you can just give me  
10 a no changes answer, and we will move along rather quickly.

11 Section II, case background.

12 MS. MASTERTON: Section II is fine with Sprint.

13 MR. SELF: It's fine with KMC.

14 COMMISSIONER BRADLEY: Okay, good. Section III,  
15 procedure for handling confidential information.

16 MS. MASTERTON: Sprint has no problems with  
17 Section III.

18 MR. SELF: Section III is fine with KMC.

19 COMMISSIONER BRADLEY: Okay. Well, let me make this  
20 statement. I have quite a bit of confidential information  
21 listed in the exhibits section of the draft order. And I know  
22 that all of you are experienced practitioners, before the  
23 Commission that is, but I just wanted to reiterate that  
24 everyone needs to be prepared to follow the Commission practice  
25 on the use of confidential information at hearing. So just be

1 aware, just to remind you of the red folders, and make sure  
2 that you have copies available.

3 And since there are no changes to this section, we  
4 will go to Section IV, post-hearing procedures.

5 MR. SELF: Commissioner Bradley, this is Floyd Self  
6 again. The second paragraph talks about a brief limit of 40  
7 pages. I had previously floated the idea to staff and to  
8 Sprint of increasing that to 50 or 60 pages, given the  
9 complexity and evidence that has been prefiled so far. I  
10 think, given the number of issues, at least 50 pages would be  
11 more reasonable, and 60 -- you obviously don't want to try and  
12 write to 60, but I think just to give the parties the  
13 flexibility.

14 MS. MASTERTON: Sprint was fine with the 40-page  
15 limit, but we don't have an objection to expanding it.

16 COMMISSIONER BRADLEY: To how many? Staff?

17 MS. KEATING: Commissioner, staff was unaware that  
18 this request was still on the table. But for what it is worth,  
19 staff would think that 50 pages, at most, should be enough.

20 COMMISSIONER BRADLEY: Okay. Well, let's go with the  
21 number 50. I think that is an excellent compromise.

22 MR. SELF: Thank you, Commissioner.

23 MS. KEATING: Thank you, Commissioner.

24 COMMISSIONER BRADLEY: Is Sprint okay with that?

25 MS. MASTERTON: Yes, Sprint is okay with that.

1 COMMISSIONER BRADLEY: Okay. Section V, prefiled  
2 testimony, exhibits and witnesses.

3 MS. MASTERTON: Sprint is fine with the order of  
4 witnesses for Sprint that is set forth here.

5 COMMISSIONER BRADLEY: Mr. Self?

6 MR. SELF: With respect to Section V, Commissioner,  
7 we have no changes for that. I would just, for the record,  
8 like to indicate that Mr. Ronald Twine, who was being  
9 substituted for and adopting the testimony of Tim Pasonski,  
10 that Mr. Twine will also be adopting all of the exhibits that  
11 were previously identified for Mr. Pasonski.

12 COMMISSIONER BRADLEY: Okay. Order of witnesses,  
13 Section VI.

14 MS. MASTERTON: I jumped ahead a little bit, but  
15 Sprint is fine with that.

16 COMMISSIONER BRADLEY: Okay.

17 MR. SELF: Commissioner, we would propose a slight  
18 readjustment in the order of the KMC witnesses. First, we  
19 would like Marva Brown Johnson. **Our second witness would be**  
20 **Christopher Meiner.** Our third witness would be Ronald Twine.  
21 And our fourth witness would be Paul Calabro.

22 COMMISSIONER BRADLEY: Any objection?

23 MS. MASTERTON: No, Sprint has no objection.

24 COMMISSIONER BRADLEY: Okay. **Sprint, do you have any**  
25 **changes?**

1 MS. MASTERTON: No, we're fine with the order as it  
2 is.

3 COMMISSIONER BRADLEY: Okay. Any other comments as  
4 it relates to the order of witnesses?

5 MR. SELF: No, sir.

6 COMMISSIONER BRADLEY: Section VII, basic positions.

7 MS. MASTERTON: Sprint has no changes.

8 MR. SELF: KMC has no changes.

9 COMMISSIONER BRADLEY: Thank you. Issues and  
10 positions. I'm not going to go issue-by-issue here, but if  
11 anyone has any comments or changes for any of the issues, let's  
12 go ahead and take them now. If not, we will move on to the  
13 next section. Any changes?

14 MR. SELF: Commissioner Bradley, KMC has one change  
15 on the positions. On Page 12, which is Issue Number 11 for the  
16 KMC position, on the fifth line down where it says accounting  
17 may be necessary, we would change the word may to shall.

18 COMMISSIONER BRADLEY: Sprint?

19 MS. MASTERTON: We don't have any objection.

20 COMMISSIONER BRADLEY: Okay. Staff? I think shall  
21 makes it --

22 MS. MASTERTON: Let me make it clear, we are not  
23 objecting to KMC stating its position in that manner. I'm not  
24 saying that we don't have a disagreement with the position,  
25 because obviously we do, but --

1 COMMISSIONER BRADLEY: Well, may is permissive; shall  
2 is a mandate.

3 MR. SELF: Yes, sir.

4 COMMISSIONER BRADLEY: It means that it will occur,  
5 shall occur.

6 MS. KEATING: Yes, sir, we will make sure that change  
7 is reflected in the order that is brought for your signature.

8 COMMISSIONER BRADLEY: Section IX, exhibit list.

9 MR. SELF: KMC has no changes.

10 MS. MASTERTON: Neither does Sprint.

11 COMMISSIONER BRADLEY: Section X, proposed  
12 stipulations.

13 MR. SELF: KMC has no changes.

14 MS. MASTERTON: Neither does Sprint.

15 COMMISSIONER BRADLEY: Section XI, pending motions.

16 MR. SELF: KMC has no changes.

17 MS. KEATING: Commissioner, if I could just note that  
18 Sprint has filed its response to that motion, and we'll be  
19 bringing a draft order for your consideration in due course.

20 COMMISSIONER BRADLEY: That's the motion to compel?

21 MS. KEATING: Yes, sir.

22 COMMISSIONER BRADLEY: Okay. And as far as KMC's  
23 motion to compel, I'm not going to -- in response to what staff  
24 just said, I'm not going to rule on that now, obviously because  
25 you don't have it. But once I have had the chance to review



1 it, to review Sprint's response, that is, I will go ahead and  
2 issue a separate order in a timely fashion.

3 Any other comments?

4 MS. KEATING: No.

5 COMMISSIONER BRADLEY: Okay. Section XII, pending  
6 confidentiality matters.

7 MS. MASTERTON: I just wanted to note that we filed a  
8 request for confidential classification today for a document  
9 that we filed on Friday.

10 MS. KEATING: We will make sure that's either  
11 reflected in the order or handled prior to bringing this order  
12 for your signature, sir.

13 COMMISSIONER BRADLEY: KMC, any comments?

14 MR. SELF: We have no changes, and we're working to  
15 get those filed.

16 MS. MASTERTON: I just wanted to ask a question. On  
17 the discovery, I'm assuming that the procedure is as we have  
18 done it before, that to the extent that the discovery is  
19 admitted into the record, then 21 days after the hearing we  
20 would file a request to follow-up.

21 MS. KEATING: That is the currently applicable rule,  
22 although I would suggest if it is something that is going to be  
23 in the record, and you know it is going to be admitted, that  
24 perhaps it would be advisable to go ahead and file a request.  
25 But that is just --

1 MS. MASTERTON: Okay. Thanks.

2 COMMISSIONER BRADLEY: Okay. That's clear, correct?

3 MS. MASTERTON: Yes, it's clear. Thank you.

4 COMMISSIONER BRADLEY: Section XIII, decisions that  
5 may impact the Commission's resolution of issues.

6 MR. SELF: Commissioner Bradley, the statement made  
7 by KMC as stated there is fine. Someone told me that one of  
8 the references for the case on appeal, one of the citations may  
9 not be correct. And if that's true, I'll get that to Ms.  
10 Keating so she can insert that.

11 COMMISSIONER BRADLEY: When do you need that, Ms.  
12 Keating? Beth.

13 MS. KEATING: Prior to issuance of this order, which  
14 I think is --

15 MR. SELF: I'll probably get it to you this  
16 afternoon.

17 MS. KEATING: That will be great.

18 COMMISSIONER BRADLEY: Sprint.

19 MS. MASTERTON: We don't have anything to add to that  
20 section.

21 COMMISSIONER BRADLEY: Okay. Section XIV, rulings.  
22 Staff.

23 MS. KEATING: No changes that I'm aware of, sir.

24 COMMISSIONER BRADLEY: Okay. I think staff included  
25 a ruling that opening statements will be ten minutes. Is that

1 the only thing that is germane to --

2 MS. KEATING: Yes, sir. That was the suggested  
3 amount of time. And I believe -- it's my understanding that  
4 the parties are generally in agreement that that would be  
5 appropriate in this case, as well.

6 MS. MASTERTON: That's correct. Sprint agrees with  
7 that.

8 MR. SELF: Yes. KMC does, as well.

9 COMMISSIONER BRADLEY: Good.

10 Is there anything else to come before the prehearing  
11 officer at this time?

12 MS. KEATING: None that staff is aware of,  
13 Commissioner.

14 COMMISSIONER BRADLEY: KMC?

15 MR. SELF: Nothing, sir.

16 COMMISSIONER BRADLEY: Sprint?

17 MS. MASTERTON: Sprint has nothing.

18 COMMISSIONER BRADLEY: Hearing nothing, this  
19 prehearing is adjourned.

20 MS. KEATING: Thank you, Commissioner.

21 MR. SELF: Thank you.

22 (The prehearing concluded at 1:55 p.m.)  
23  
24  
25

1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

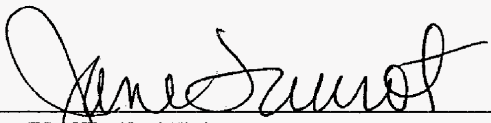
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5 I, JANE FAUROT, RPR, Chief, Office of Hearing  
6 Reporter Services, FPSC Division of Commission Clerk and  
7 Administrative Services, do hereby certify that the foregoing  
8 proceeding was heard at the time and place herein stated.

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

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

19 DATED THIS 21st day of June, 2005.

20  
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22  
23  
24  
25  


JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
FPSC Division of Commission Clerk and  
Administrative Services  
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