

VOTE SHEET

NOVEMBER 29, 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: What is the Florida Public Service Commission's jurisdiction to address all or part of this complaint? Recommendation: The Commission should affirm that it has jurisdiction to investigate and address the allegations presented in Sprint's complaint pursuant to Section 364.16 (3)(b), Florida Statutes, consistent with Order No. PSC-05-1065-FOF-TP.

APPROVED

COMMISSIONERS ASSIGNED: Baez, Deason, Bradley

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

Handwritten signatures of commissioners in the majority column.

Blank lines for dissenting signatures.

REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE

11305 NOV 29 05

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

Recommendation: Staff recommends that KMC Data LLC should be dismissed as a defendant in this Complaint because there is no nexus between it and the circumstances giving rise to this docket. Additionally, staff recommends that KMC V should be retained as a joint defendant with KMC III, because an adequate nexus has been demonstrated.

APPROVED

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?

Recommendation: No. There is no provision in the Interconnection Agreements with KMC or Sprint's tariff that requires an audit prior to filing a complaint with this Commission or that requires an audit to establish liability.

APPROVED

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

Recommendation: The jurisdiction and compensation of a call should be based on its end points, unless otherwise specified in the applicable interconnection agreement. Notwithstanding this conclusion, enhanced services traffic may be exempt from access charges.

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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 compensation and amount, if any, due to Sprint for such traffic?

Recommendation: Yes. KMC delivered interexchange traffic to Sprint over local interconnection trunks in violation of the terms of its Interconnection Agreements with Sprint. However, the amount cannot be determined based on this record. The parties should obtain an audit or accounting to determine the amount, subject to the adjustments noted by staff.

APPROVED

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?

Recommendation: Sprint's backbilling is only limited by Section 95.11 (2) , Florida Statutes.

APPROVED

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

Recommendation: Yes. An audit of the traffic in question should be completed by an independent third party to determine the appropriate refund. Responsibility for payment of the cost of the audit should be handled in the same manner as recommended in Issue 8.

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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?

Recommendation: The appropriate payment arrangements should be determined after the audits conducted as directed in Issues 8 and 10 are complete. A late payment charge of 1.5% per month should be paid by KMC.

APPROVED

Issue 12: Should this docket be closed?

Recommendation: No. If the Commission approves staff's recommendation, this Docket should remain open pending the Commission's review of the audits for Issues 8 and 10. The Commission should then establish a timeline for the payment of the appropriate refund amount as determined by the auditor.

APPROVED