

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: May 5, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Fordham)
Division of Competitive Markets & Enforcement (Brown)

RE: Docket No. 031047-TP – Request for approval of interconnection agreement between Sprint-Florida, Incorporated, KMC Telecom III LLC, KMC Telecom V, Inc. and KMC Data LLC.

AGENDA: 05/17/05 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\031047.RCM.DOC

Case Background

On November 12, 2003, KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC (KMC) filed a Petition for Arbitration of Interconnection Agreement with Sprint Communications Company Limited Partnership and Sprint-Florida, Incorporated (Sprint). On November 18, 2003, Sprint filed its Response to Petition for Arbitration. On June 1, 2004, Order No. PSC-04-0563-PCO-TP was issued, setting the matter for hearing and establishing the procedures to be followed in preparation for said hearing.

At the Prehearing held August 30, 2004, the parties announced that all issues except one had been resolved. It was also determined at the Prehearing that the remaining issue (Issue No. 2) concerning traffic carried using Internet protocol (VoIP) would be redefined. After consideration of the parties' positions, the final wording of the issue presented for arbitration and resolution was approved.

On December 13, 2004, KMC filed its Motion for Temporary Abeyance of this Docket, and on December 20, 2004, Sprint filed its Response in Opposition to KMC's Motion to Hold Proceedings in Abeyance. KMC's Motion was denied by the entry of Order No. PSC-05-0074-PCO-TP on January 20, 2005.

On February 25, 2005, the parties filed their Joint Motion for Abeyance, accompanied by a Settlement Agreement, properly executed by the parties. The parties announced that they had reached a settlement on all issues which are a part of this Docket. On April 25, 2005, KMC filed a Notice of Voluntary Dismissal of its Complaint with prejudice.

Discussion of Issues

ISSUE 1: Should the Commission acknowledge KMC's Notice of Voluntary Withdrawal of its Petition?

RECOMMENDATION: Yes. The Commission should acknowledge KMC's Notice of Voluntary Withdrawal of its Petition. In addition, the Commission should find that the voluntary withdrawal renders any and all outstanding motions moot. (**Fordham, Brown**)

STAFF ANALYSIS: The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So.2d 578, 579 (Fla. 1975). It is also established civil law that once a timely voluntary dismissal is taken, the trial court loses its jurisdiction to act. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So.2d 68, 69 (Fla. 1978).

Therefore, staff recommends that the Commission acknowledge KMC's Notice of Voluntary Withdrawal of its Petition, and find that the voluntary dismissal renders any and all outstanding motions moot. Additionally, the Commission should find that all confidential materials filed in this Docket be returned to the filing party.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. The Docket should remain open pending approval of the submitted Agreement. Thereafter, the Docket should be closed administratively. **(Fordham)**

STAFF ANALYSIS: The Docket should remain open pending approval of the submitted Agreement. Thereafter, the Docket should be closed administratively.