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 4, 2006

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

FROM: Office of the General Counsel (Wiggins, Fordham)
Division of Competitive Markets & Enforcement (King, Pruitt)

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.

AGENDA: 05/16/06 – Regular Agenda – Joint Notice of Settlement With Prejudice – Participation at the Discretion of the Commission.

COMMISSIONERS ASSIGNED: Deason

PREHEARING OFFICER: Deason

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\041144.RCM.DOC

Case Background

On September 24, 2004, Sprint-Florida, Incorporated (Sprint) filed its complaint against KMC Telecom III LLC, KMC Telecom V, Inc. and KMC Data LLC (collectively KMC), alleging that KMC knowingly terminated intrastate interexchange traffic over local interconnection arrangements, in violation of Section 364.16(3)(a), Florida Statutes, to avoid paying Sprint access charges. Sprint also asserted that this misrouting of access traffic has resulted in an overpayment of reciprocal compensation to KMC for local minutes terminated to KMC by Sprint.

The hearing in this matter was conducted on July 12, 2005, and on December 19, 2005, the Commission issued its Order on Sprint's Complaint, Order No. PSC-05-1234-FOF-TP. On January 3, 2006, KMC filed its Motion for Reconsideration of Order No. PSC-05-1234-FOF-TP, and Request for Oral Argument, and on January 13, 2006, Sprint filed its Response to KMC's Motion, and Sprint's Cross-Motion for Reconsideration. KMC did not file a response to Sprint's Cross-Motion for Reconsideration.

On April 21, 2006, the parties filed their Joint Notice of Settlement With Prejudice, advising this Commission that the parties had resolved all the issues between them which had constituted the basis of this docket and requesting that we acknowledge that settlement and close this docket.

Discussion of Issues

Issue 1: Should the Commission acknowledge the parties' Joint Notice of Settlement With Prejudice?

Recommendation: Yes. The Commission should acknowledge the Joint Notice of Settlement With Prejudice. In addition, the Commission should find that the Joint Notice of Settlement With Prejudice renders any and all outstanding motions moot, and that any confidential documents filed in this matter be returned to the submitting party. (Fordham)

Staff Analysis: The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So2d 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 So2d 68, 69 (Fla. 1978).

Though this Commission has already issued its Order on the Complaint in this Docket, there are motions for reconsideration outstanding and the Docket is still viable. However, staff believes the Notice of Settlement with a request that the Docket be closed to be legally tantamount to a notice of voluntary dismissal. Therefore, staff recommends that the Commission acknowledge the parties' Joint Notice of Settlement With Prejudice and find that the Settlement 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.

Issue 2: Should this docket be closed?

Recommendation: Yes. With the Notice of Settlement and request that the Docket be closed, there are no further matters for this Commission to adjudicate in this Docket and, therefore, it should be closed. (Fordham)

Staff Analysis: With the Notice of Settlement and request that the Docket be closed, there are no further matters for this Commission to adjudicate in this Docket and, therefore, it should be closed.