

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition of KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC for arbitration of interconnection agreement with Sprint-Florida, Incorporated.

DOCKET NO. 031047-TP  
ORDER NO. PSC-05-0073-PCO-TP  
ISSUED: January 20, 2005

ORDER MODIFYING PROCEDURAL SCHEDULE

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy and inexpensive determination of all aspects of the case.

**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. They further agreed that the remaining issue need only be briefed and that a hearing was unnecessary. It was also determined at the Prehearing that the remaining issue (Issue No. 2) concerning traffic carried using Internet protocol (VoIP) should be redefined in greater detail so as to elucidate more specific, pertinent information upon which the Commission can rely for its decision. Accordingly, staff redrafted the issue and circulated it to the parties for their input. Upon presenting the issue to the parties, Sprint agreed, but KMC did not. After consideration of the parties' positions, I approved the final wording of the issue presented for arbitration and resolution. (Attachment A)

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 for Temporary Abeyance was denied by separate Order, filed simultaneously with this Order. Based on the denial of KMC's Motion for Temporary Abeyance, this Order will establish the procedure for resolution of the remaining issue in this Docket.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**Procedural Schedule**

The parties have advised they still believe this Docket can be concluded based on briefs and testimony rather than a full hearing. Because the new wording of Issue No. 2 expands the scope beyond that of the original wording, additional testimony and discovery limited to Issue No. 2 may be required. Therefore, the following procedural dates are hereby established for the conclusion of this Docket:

Supplemental Testimony Due	February 14, 2005
Supplemental Rebuttal Testimony Due	February 28, 2005
Discovery Cutoff Date	February 28, 2005
Briefs Due	March 28, 2005

**Discovery Procedures**

The following discovery procedures shall apply:

- A. All discovery requests shall be served by hand or electronic mail.
- B. Objections to discovery shall be due within 5 calendar days.
- C. Responses to discovery shall be due within 15 calendar days (inclusive of mailing) of receipt of the discovery request.

Based on the foregoing, it is

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that Order No. PSC-04-0563-PCO-TP, issued June 10, 2004, and Order No. PSC-04-0723-PCO-TP, issued on July 27, 2004, are modified as set forth in the body of this Order. It is further

ORDERED that Order No. PSC-04-0563-PCO-TP, and Order No. PSC-04-0723-PCO-TP are hereby reaffirmed in all other respects.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 20th day of January, 2005.

  
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CHARLES M. DAVIDSON  
Commissioner and Prehearing Officer

(SEAL)

LF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

2. How should the parties identify, exchange and compensate each other for traffic transported in whole or in part using Internet protocol? In responding to this question, please address the following aspects, as pertinent:
  - (a) What types of traffic are originated on one party's network and terminated on the other party's network? Approximately how much of each traffic type is originated on one party's network and terminated on the other party's network?
  - (b) Which of the traffic types identified in (2)(a) are initiated or routed utilizing Internet protocol?
  - (c) How are each of the traffic types identified in (2)(a) physically routed and terminated to the other party's network, and specifically how is Internet protocol used or involved in the routing of the traffic?
  - (d) For each of the traffic types identified in (2)(b), what form of intercarrier compensation, if any, is currently paid to the terminating carrier?
  - (e) For each of the traffic types identified in (2)(b), what form of intercarrier compensation should be paid on a going-forward basis, if any, and why?
  - (f) For each of the traffic types identified in (2)(b), what existing FCC precedent supports your classification of this traffic and the payment (or nonpayment) of intercarrier compensation?
  - (g) For each of the traffic types identified in (2)(b), can the terminating carrier identify the specific traffic type? If so, how? What reporting and auditing requirements, if any, are needed?