

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by KMC Telecom Inc. for relief in accordance with Section 252(1) of the Telecommunications Act of 1996, with respect to refusal by Sprint-Florida, Incorporated to make available one term in a previously approved interconnection agreement

DOCKET NO. 970496-TP
ORDER NO. PSC-97-0722-PCO-TP
ISSUED: June 19, 1997

ORDER GRANTING JOINT MOTION
FOR
ACCEPTANCE OF STIPULATION OF FACTS
AND
TO PROCEED ON AN EXPEDITED AND INFORMAL BASIS

On February 25, 1997, pursuant to Section 252(b) of the Telecommunications Act of 1996 (Act), 47 U.S.C. §251 et seq., KMC Telecom Inc., (KMC) filed a petition for arbitration of rates, terms, and conditions for interconnection and related arrangements with Sprint United-Centel, Inc., (Sprint-Florida). The matter was docketed in Docket No. 970242-TP. In its petition, KMC stated that it had reached agreement in principle with Sprint-Florida on all issues except the issue of compensation for termination of traffic involving tandem switching. KMC asserted that Sprint-Florida refused to make available the compensation terms for local traffic termination in Sprint-Florida's interconnection agreement with MFS Communications Company, Inc. It requested that the Commission arbitrate that single issue pursuant to Section 252(i) of the Act.

At the prehearing conference on April 21, 1997, KMC withdrew its petition for arbitration. KMC confirmed its withdrawal by letter dated May, 6, 1997. Instead KMC filed a new petition, pursuant to Rule 25-22.036, Florida Administrative Code, seeking relief under Section 252(i) of the Act on April 25, 1997, for which the instant docket was opened.

On May 21, 1997, KMC and Sprint-Florida filed a Joint Motion for Acceptance of Stipulation of Material Facts and to Proceed on an Expedited and Informal Basis. See Attachment A. The parties submit that the Stipulation of Material Facts accurately reflects all of the material facts that will be involved in the Commission's consideration of KMC's petition. Accordingly, the parties urge that the Commission conduct an informal proceeding pursuant to Section 120.57(2), Florida Statutes.

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that the Commission conduct an informal proceeding pursuant to Section 120.57(2), Florida Statutes.

The parties request the following briefing schedule: initial briefs due June 30, 1997, and reply briefs due July 11, 1997. Additionally, the parties request that the Commission accept the Stipulation of Facts. Finally, they propose that the issue to be briefed should be the following:

Under Section 252(i) of the Telecommunications Act of 1996, on what basis if any can Sprint-Florida refuse to allow KMC to opt into a provision in a previously approved interconnection agreement?

Accordingly, the parties shall file briefs of no more than 60 pages on June 30, 1997, and reply briefs of no more than 30 pages on July 11, 1997. The arguments in the briefs shall be limited to the single issue proposed by the parties and stated above.

It is, therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the Joint Motion for Acceptance of Stipulation of Material Facts and to Proceed on an Expedited and Informal Basis is granted as set forth in the body of this Order. It is further

ORDERED that the Stipulation of Material Facts, attached hereto as Attachment A, is accepted and incorporated herein by reference.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 19th day of June, 1997.



J. TERRY DEASON
Commissioner and Prehearing Officer

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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.

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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Records and Reporting, 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.

ATTACHMENT A

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the matter of)	
)	
KMC TELECOM, INC.)	
)	
Petition for Relief To Opt Into An Approved)	Docket No. 970496-TP
Interconnection Agreement)	
)	
SPRINT - FLORIDA,)	
INC.)	

STIPULATION OF MATERIAL FACTS

KMC Telecom, Inc. ("KMC") and Sprint-Florida, Inc. ("Sprint"), by their undersigned attorneys, stipulate to the following material facts in the above-captioned proceeding:

1. KMC is a Delaware corporation, with offices located at 1545 Route 206, Suite 300, Bedminster, NJ 07921, which has applied for and received certification to provide interexchange and local exchange service in a number of states.
2. Sprint is an incumbent provider of local exchange services within the State of Florida. Sprint is a corporation having its principal place of business at 555 Lake Border Drive, Apopka, Florida 32703. Sprint provides and at all material times has provided intrastate, local exchange and exchange access service in Florida subject to the regulatory authority of this Commission.
3. For purposes of §§ 251 and 252 of the 1996 Act, Sprint is and has been at all material times an "incumbent local exchange carrier" in the State of Florida as defined by Sec. 251(h) of the Telecommunications Act of 1996 ("1996 Act").
4. On September 13, 1996, KMC sent a letter to Sprint requesting interconnection pursuant to § 251 of the 1996 Act.
5. The parties have reached an agreement in principle on all except one issue. An agreement reflecting the terms of this agreement in principle is in the process of being prepared and will be filed after it has been executed.

6. In the course of the negotiations, KMC stated that it was willing to accept, in the State of Florida, the terms and conditions as set forth in the Partial Interconnection Agreement for LATA 458 between United Telephone Company of Florida and MFS Communications Company, Inc. ("MFS Agreement"), which was approved by this Commission in Order No. PSC-97-0240-FOF-TP, including Section 5.4.2 and Section 26.2.

7. KMC and Sprint agreed that, pursuant to Section 252(i) of the 1996 Act, KMC would opt into the MFS Agreement, with modifications to reflect the differences in geography and network design between MFS and KMC.

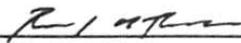
8. Sprint, however, pursuant to its interpretation of Section 26.2 of the MFS Agreement has refused to permit KMC to opt into Section 5.4.2 of the MFS Agreement, which establishes a reciprocal call termination rate of \$0.0055 per minute of use.

9. KMC is not currently providing tandem switching.

10. The Commission may take official notice and recognition of Order No. PSC-97-0294-FOF-TP, issued on March 14, 1997, in Docket No. 961230-TP.

11. A true and correct copy of the MFS Agreement is attached hereto as Exhibit A.

Respectfully submitted,


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