

1 **BEFORE THE PUBLIC SERVICE COMMISSION**

2 **SPRINT-FLORIDA, INCORPORATED**

3 **REBUTTAL TESTIMONY OF**

4 **PETE SYWENKI**

5
6 **Q. Please state your name and business address.**

7 **A. My name is Pete Sywenki. My business address is 6450 Sprint Parkway**
8 **Overland Park, KS, 66251.**

9
10 **Q. Are you the same Pete Sywenki that filed Direct Testimony in this docket on**
11 **behalf of Sprint-Florida, Incorporated (hereafter referred to as "Sprint" or**
12 **the "Company") on June 11th, 2004?**

13 **A. Yes.**

14
15 **Q. What is the purpose of your testimony?**

16 **A. The purpose of my testimony is to respond to the Direct Testimonies submitted in**
17 **this case by KMC witnesses Gates and Collins regarding Issues 14 and 15.**

18
19 **Issue 14: Under what conditions, if any, may Sprint establish its own**
20 **transport facilities for the delivery of Sprint-originated traffic?**

21
22 **Q. Please restate the issue being disputed by KMC and Sprint?**

23 **A. Sprint is seeking language in the interconnection agreement that allows Sprint to**
24 **self-provision transport and deliver its traffic at a location on KMC's network if it**
25 **is more economical for Sprint to do so. In certain cases, it may make economic or**

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1 technical sense for Sprint to have the option to self-provision transport to a
2 location on KMC's network. For example, Sprint may have facilities at or near a
3 KMC switch which would make it more economical for Sprint to provision
4 transport **to a** location on KMC's network rather than hauling the traffic to a
5 distant **POI** on Sprint's network.

6
7 Contractual obligations that KMC and Sprint have already agreed to and are not
8 in dispute in this docket require Sprint to share the cost of interconnection
9 facilities. (Although not **an** issue in this proceeding, Sprint's position on
10 interconnection facility sharing obligations is that the ILEC should only be
11 required to share costs of interconnection facilities within reason (such as within
12 the LATA). In particular, the contract language allows KMC to charge Sprint
13 based on Sprint's proportionate use of the interconnection facility that connects
14 the **two** networks (extending from the POI on Sprint's network to KMC's
15 network). Given that the interconnection facility is physically located on KMC's
16 side of the POI, KMC is contractually responsible for establishing the
17 interconnection facility by self-provisioning leasing **from** Sprint or leasing from a
18 third party. However, in this case, Sprint is seeking an option of self-provisioning
19 transport ~~or~~ Sprint-originated traffic to KMC's network if it is more efficient and
20 economical for Sprint to do so as opposed to sharing the cost of **a** facility (or
21 facilities) provisioned or leased by KMC. Whether KMC charges Sprint back for
22 a portion of a shared facility or Sprint self-provisions transport to **KMC's**
23 network, Sprint will be financially responsible for its originated traffic to KMC's
24 network.

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Q. Does Witness Gates appear to clearly understand Sprint's position on this issue?

A. No. After reading Witness Gates' testimony, it appears that he may misunderstand Sprint's position regarding this issue. Specifically, he states on page 18:

If Sprint were allowed to identify POIs for originating traffic, it would be able to impose additional and unwarranted costs **on KMC**. Specifically, Sprint could force KMC to build or lease facilities (or even switches) to reach into every local **calling area** regardless **of** how many customers KMC might actually have in a given local calling **area**. If Sprint were allowed such discretion, it would **force KMC** to essentially duplicate Sprint's **network**, an unwarranted and uneconomic result.

Furthermore, on page 21, Witness Gates states,

As such, Sprint's suggestion would force KMC to establish POIs in many locations **as** opposed to the single **POI** per LATA currently required by the FCC rules (**47 CFR 51.305(a)**). Such a requirement **as** the FCC recognized will undermine the development of competition.

1 Witness Gates is articulating reasons why Sprint should not be able to force KMC
2 to establish additional POIs or pay for transport deeper into Sprint’s network.
3 Yet, Sprint’s proposal on this issue does not require either. Sprint is simply
4 asking for the opportunity to choose to self-provision transport for its originating
5 transport rather than utilize (and **share the costs of**) a two-way interconnection
6 facility provisioned by KMC to the extent that Sprint can self-provision its
7 originated traffic to KMC’s network in a less expensive fashion. Again, while the
8 default arrangement is that the carriers will share the cost of the interconnection
9 facility (on a proportionate basis), Sprint is simply seeking an opportunity to self-
10 provision its **own** transport to deliver traffic to KMC if Sprint can do so more
11 economically.

12
13 **Q. Please explain why this issue is important to Sprint.**

14 **A.** Issue **14** is important to Sprint because Sprint’s proposal helps to ensure that
15 Sprint’s **costs** are within Sprint’s control. As mentioned above, Sprint, unlike
16 **many** ILECs, is willing to share the **cost** of interconnection facilities that join two
17 parties’ networks on a proportional basis. However, Witness Gates’ testimony on
18 page 22 states that “KMC should pay **all** transport costs on its side of the POI”
19 (emphasis added). If Witness Gates’ statement is accurate and KMC has **no**
20 desire to charge Sprint for Sprint’s proportionate use of a two-way facility on
21 KMC’s side of the POI, that resolution would be acceptable to Sprint. In that
22 case, Sprint asks, then, that the current language in the interconnection agreement
23 be amended accordingly, and Issue 14 would become moot.

24

1 **Issue 15: What are the requirements for interconnection and compensation**
2 **for the transport of Sprint end user originated ISP-bound traffic between**
3 **Sprint’s originating local calling area and a Point of Interconnection (“POI”)**
4 **outside Sprint’s local calling area?**

5
6 **Q. With respect to Issue 15, please restate the issue being disputed by KMC and**
7 **Sprint?**

8 **A. Issue 15** relates to transport **cost** obligations that result when CLECs only
9 establish a single POI in a LATA that contains more than **one** local calling **area**.
10 The disagreement between the parties concerns compensation for the transport of
11 ISP-bound traffic (Sprint originated – KMC terminated). Sprint believes that
12 **FCC** rules do not prohibit it **from** charging KMC for the cost of transport of
13 Sprint-originated ISP-bound traffic that it incurs to deliver the traffic to a distant
14 POI located outside the local calling **area** from where the call originated. **KMC**
15 believes that it should not be required to establish more than one POI per LATA
16 regardless of the nature of the traffic and refuses to share the costs of transport for
17 Sprint-originated ISP-bound traffic to this single POI.

18
19 **Q. On page 22, Witness Gates references FCC Rule 51.703(b) to support KMC’s**
20 **position regarding the allocation of cost for the delivery of ISP-Bound traffic**
21 **to the POI. Does Sprint believe 51.703(b) is relevant to the issues in this**
22 **arbitration?**

1 A. No. While I am not an attorney, KMC's reliance upon FCC rule 51.703(b)
2 appears misguided as 51.703(b) does not apply to ISP-bound traffic. 47 CFR
3 §51.703(b) states the following:

4 "A LEC may not assess charges on any other telecommunications carrier
5 -- for telecommunications traffic that originates on the LEC's network."

6 (emphasis added)

7

8 Furthermore, the FCC has defined telecommunications traffic as the following
9 under 47 CFR §51.701(b) and §51.701(b)(1):

10

11 Telecommunications traffic. For purposes of this subpart,
12 telecommunications traffic means: Telecommunication traffic exchanged
13 between a LEC and a telecommunications carrier other than a CMRS
14 provider, except for telecommunications traffic that is interstate or
15 intrastate exchange access, information access, or exchange services for
16 such access. (emphasis added)

17

18 These rules clearly exclude ISP-bound traffic (information access) from
19 telecommunications traffic subject to reciprocal compensation and, therefore, 47
20 C.F.R. §51.703(b) is not applicable to ISP-bound traffic.

21

22 Q. Both Witness Collins (Direct Testimony, page 7) and Witness Gates (Direct
23 Testimony, page 23) refer to the FCC's ISP Remand Order as support for
24 KMC's position. Please respond.

1 **A.** It is clear that KMC believes that the FCC’s ISP Remand Order and FCC Rule
2 51.703(b) prevent **Sprint from** recovering transport **costs** for Sprint-originated
3 ISP-bound traffic. As demonstrated above, KMC’s reliance **upon 51.703(b)** is
4 misguided. Furthermore, it is ironic that **KMC** would refer **to** the ISP Remand
5 Order **as** support for its position in light **of the** fact that Sprint believes the ISP
6 Remand Order expressly affirms Sprint’s position. To be clear, it is in the FCC’s
7 ISP Remand Order that the **FCC** concludes that ISP-bound **traffic** is not **traffic**
8 subject to the FCC’s reciprocal compensation rules. In addition to the paragraph
9 references provided in my Direct Testimony, the FCC makes this point especially
10 clear in Paragraph **44** of the ISP Remand Order:

11 **“Because** the legacy term “information access” in section **251(g)**
12 encompasses ISP-bound traffic, however, this traffic is excepted from the
13 **scope** of the “telecommunications” subject to reciprocal compensation
14 under section 25 1 (b)(5).”

15
16 When Witness Gates (in his **Direct** Testimony on page 22) **asserts** that there “is no
17 basis in law” for distinguishing between ISP-bound traffic and
18 telecommunications traffic, **he** is obviously **ignoring** the fact that the FCC, itself,
19 **makes** this distinction. **The** FCC distinguishes between “telecommunications”
20 traffic and ISP-bound traffic numerous times in the ISP Remand Order. While
21 51.703(b) **certainly** applies to **telecommunications** traffic, the FCC has made
22 clear that ISP-bound traffic is “information access” - **not telecommunications**
23 **traffic**. Furthermore, the FCC rules apply for the mutual exchange of traffic, i.e.,
24 that is exchanged in a reciprocal manner. As mentioned in my Direct Testimony,

1 given that Sprint originates the **vast** majority of traffic between the parties, it is
2 obvious that essentially all of the traffic terminated to KMC by Sprint is ISP-
3 **bound** traffic for which there is **no** mutual **exchange**.

4
5 Finally, the goal of the **FCC** with its ISP Remand Order was to eliminate the
6 “regulatory arbitrage opportunities associated with intercarrier payments” (ISP
7 Remand Order at ¶ 7) and the changes it made were directed at doing that. The
8 reasons used by the FCC to order a bill-and-keep regime for ISP-Bound traffic for
9 new entrants and reduce the rates for existing providers are equally applicable to
10 the transport in question.

11
12 To summarize, Witness Gates is incorrect to **assert** that either 51.703(b) or the ISP
13 Remand Order prevent Sprint **from** seeking recovery for transport costs that result
14 **from** exchanging one-way, non-reciprocal, ISP-bound traffic.

15
16 **Q.** On page 22 of his Direct Testimony, Witness Gates refers to previous
17 Commission decisions regarding transport cost obligations, specifically the
18 US LEC vs. Verizon and the GNAPs vs. Verizon arbitration decisions, to
19 support KMC’s position. Please respond to these references.

20 **A.** Similar to Sprint’s interpretation of the Commission’s decision in the Generic
21 Reciprocal compensation Docket, Docket No. 000075-TP, the parties in those
22 arbitrations do not appear to have asked this Commission to address the transport
23 issues associated with ISP-bound traffic that Sprint is specifically asking the
24 Commission to address in this arbitration. Issue 15 addresses originating transport

1 obligations specifically relating to ISP-bound traffic. Therefore, Sprint does not
2 believe that the Commission's previous decisions are relevant to the scope of this
3 issue. In this case, Sprint is asking the Commission to recognize that 51.703(b)
4 does not apply to ISP-bound traffic. While Sprint recognizes that the
5 Commission's prior decisions govern transport obligations associated with the
6 mutual exchange of telecommunications traffic, they are not relevant to one-way
7 ISP-bound traffic. The Commission must understand that by allowing a CLEC to
8 establish a single POI in the LATA for ISP-bound traffic, the ILEC is required to
9 haul this one-way, non-reciprocal traffic, possibly across a LATA, without an
10 opportunity to recover any transport costs. As mentioned in my Direct
11 Testimony, CLECs, like KMC, who have very little or no originating traffic have
12 absolutely no incentive to establish multiple interconnection arrangements that
13 would be more efficient for both carriers if traffic were to be mutually exchanged.
14 Obviously, CLECs with little originating traffic prefer that ILECs incur the cost
15 required to carry all of the traffic to a single POI in the LATA. This is the issue
16 that Sprint is asking the Commission to address and to find that ILECs should not
17 assume 100% of this transport burden.

18

19 **Q. While Sprint firmly believes that it is legally justifiable to charge KMC for**
20 **transport associated with ISP-bound traffic that Sprint is required to deliver**
21 **to a distant POI outside the local calling area, as mentioned in my Direct**
22 **Testimony, Sprint has offered to KMC a compromise proposal in an effort to**
23 **resolve this and other issues. What is the status of that proposal?**

1 A. Prior to filing Direct Testimony, Sprint offered KMC a proposal in an effort to
2 resolve the issue outside of arbitration. The specifics of that proposal are included
3 my Direct Testimony. It is important to note that the proposal results in a
4 balanced, reasonable sharing of the transport costs, particularly since virtually all
5 of **the traffic** exchanged is one-way, ISP-bound **traffic**. Sprint's desire is to
6 develop an arrangement where the parties share the cost of ISP-related transport,
7 **as** opposed to Sprint being responsible for hauling one-way traffic across an entire
8 LATA to KMC's single POI. Although KMC and Sprint have discussed the
9 proposal, to date, KMC has not formally accepted or rejected the proposal.

10

11 **Q. Please summarize your Rebuttal testimony.**

12 A. Both Issues 14 and 15 relate to **costs** associated with transporting traffic.
13 Regarding Issue 14, to the extent KMC wishes to enjoy the benefit of Sprint's
14 willingness to share interconnection facility costs, Sprint is simply asking for the
15 ability to self-provision transport for its originating traffic to KMC's network if it
16 is more economic and **efficient** for Sprint to do **so**, rather than sharing the costs of
17 **a** two-way facility with KMC. While the default is that both carriers exchange
18 traffic at the POI on Sprint's network and share the costs of the transport facility
19 that joins the two **networks**, Sprint is simply seeking contract language reserving
20 the right to control its costs by self-provisioning transport to carry Sprint-
21 originated traffic between the POI and KMC's switch.

22 With respect to Issue 15, **it is clear that FCC Rule 51.703(b)** only applies to
23 telecommunications traffic. The FCC, in its ISP Remand Order, clearly states that
24 ISP-bound traffic is not telecommunications traffic – rather it is information

1 access traffic. Therefore, any reliance upon 51.703(b) to define transport
2 obligations for information access traffic is simply incorrect. In the scope of this
3 arbitration, this Commission has the ability to adopt language that better balances
4 the transport cost obligations for one-way, ISP-bound traffic and not require to
5 ILEC to assume transport costs for this one-way traffic to a single POI in a
6 LATA.

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8 **Q. Does this conclude your Rebuttal testimony?**

9 **A. Yes, it does.**

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