

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Sprint-Florida, Incorporated)
Against KMC Telecom III LLC,)
KMC Telecom V, Inc. and KMC Data LLC,)
for failure to pay intrastate access charges)
pursuant to its interconnection agreement and)
Sprint's tariffs and for violation of)
Section 364.16(3)(a), Florida Statutes.)

Docket No. 041144-TP
Filed: February 28, 2005

**KMC TELECOM III LLC, KMC TELECOM V, INC.
AND KMC DATA LLC'S ANSWER, AFFIRMATIVE DEFENSES AND
REDACTED COUNTERCLAIM TO SPRINT-FLORIDA INC.'S COMPLAINT**

KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC (collectively "KMC") hereby file this answer and affirmative defenses to Sprint-Florida Incorporated's ("Sprint") Complaint, assert their counterclaims, and state:

ANSWER

INTRODUCTION

Sprint's complaint reveals a frustration on Sprint's part with the intercarrier compensation to which it is entitled, and which it has received, from KMC. Rather than engaging in any sort of intentional misbehavior, as Sprint alleges, KMC has properly routed the traffic in question over local interconnection trunks. KMC has forwarded to Sprint when delivering traffic any originating line information it has received or its switch has generated. KMC has not removed, altered, or replaced any originating line information needed by Sprint to determine the jurisdictional nature of traffic that KMC has delivered to Sprint over their local interconnection trunks in Florida. Instead, KMC has followed all industry standards and regulatory requirements.

KMC has paid compensation to Sprint for the termination of the traffic at issue consistent with the applicable law, the parties' interconnection agreements, and Sprint's tariffs. KMC has

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not knowingly taken any actions to avoid the payment of access charges, has not violated its interconnection agreements with Sprint, and has not contravened the terms in any applicable Sprint tariffs. Accordingly, the Commission should deny Sprint the relief sought in its Complaint and terminate this proceeding.

PARTIES

1. KMC lacks sufficient knowledge to admit or deny the allegations of this paragraph. Footnote 1, referenced in paragraph 1, and the accompanying text contain conclusions of law to which no response is required. The Telecommunications Act of 1996 and Florida Statutes speak for themselves.

2. KMC lacks sufficient knowledge to admit or deny the allegations of this paragraph.

3. Paragraph 3 contains statements to which no response is required.

4. KMC admits the allegations contained in paragraph 4, except that KMC states that it operated under the 1997 MCI Agreement beginning in 2002, the Amendment No. 1 regarding reciprocal compensation was entered into on June 26, 2002, and KMC's adoption of the FDN Agreement only became effective by operation of law in July 2003. Footnotes 2-4, referenced in paragraph 4, contain references to and characterizations of documents that speak for themselves and to which no response is required, but to the extent that a response is required, the allegations are denied. By way of further response, KMC states that during the period in question, KMC Data LLC and KMC Telecom V, Inc., did not deliver any traffic to Sprint in Florida over local interconnection trunks or PRI circuits. These carriers are not properly parties to the Complaint, there is no evidence that these carriers performed any of the actions of which Sprint alleges in the Complaint, and the Commission should dismiss the actions against them. Furthermore, in addition to interconnection contracts between the parties, the manner in which

the parties exchange and treat traffic is governed by federal and state law. For example, information services or enhanced services traffic historically has been exempt from access charges and treated as local traffic.

5. KMC admits that the listed addresses for KMC Telecom III, LLC, KMC Telecom V, Inc., and KMC Data LLC are accurate.

JURISDICTION

6. KMC denies the statements contained in paragraph 6. By way of further response, KMC states that the Commission does not have jurisdiction over this matter to the extent that it involves interstate interexchange traffic, enhanced services or information services traffic, or Voice over Internet protocol (“VoIP”) traffic. Jurisdiction over any such traffic, and any intercarrier compensation based thereon, is properly with the Federal Communications Commission, or “FCC.”

7. KMC admits that the allegations contained in sentences 1-4 of paragraph 7, as a general matter, reasonably accurately characterize the routing of traffic in the historically “typical” situation. KMC denies the allegations contained in sentence 5 of paragraph 7. Footnote 5, referenced in paragraph 7, and the accompanying text contain conclusions of law and contain characterizations of documents that speak for themselves and to which no response is required, but to the extent that a response is required, the allegations are denied. By way of further response, KMC states that the jurisdiction of traffic is not always determined by the originating and terminating end points of the communication. For example, recent decisions of the FCC indicate that traffic that is IP-enabled or that uses the Internet may be subject to interstate jurisdiction only. In fact, written comments submitted by this Commission to the FCC on July 14, 2004, in the FCC’s *IP-Enabled Services* rulemaking proceeding (WC Docket No. 04-

36) adopted this position. Moreover, KMC further states that under current law and regulations not all traffic that might otherwise be deemed interexchange traffic is subject to access charges. Information services or enhanced services traffic, for example, historically has been exempt from access charges and entitled to treatment as local traffic.

8. Sentences 1 and 2 of paragraph 8 contain legal conclusions to which no response is required, but to the extent that a response is required, the allegations are denied. KMC lacks sufficient information to admit or deny the allegations contained in sentences 3 and 4 of paragraph 8. To the extent that a response is required, the allegations are denied. Sentence 5 of paragraph 6 contains characterizations of tariffs on file with the State of Florida and the Federal Communications Commission that speak for themselves and to which no response is required. Footnote 6, referenced in paragraph 8, and the accompanying text contain conclusions of law and contain characterizations of documents that speak for themselves and to which no response is required, but to the extent that a response is required, the allegations are denied.

9. The allegations in paragraph 9 contain characterizations of statutes that speak for themselves and to which no response is required.

10. The allegations in sentences 1-3 and 5 of paragraph 10 contain characterizations of statutes, regulations, and documents that speak for themselves and to which no response is required. Sentence 4 of paragraph 10 contains conclusions of Sprint to which no response is required. To the extent that a response is required, the allegations are denied. Footnote 7, referenced in paragraph 10, contains characterizations of documents that speak for themselves and to which no response is required, but to the extent that a response is required, the allegations are denied. Sentence 6 of paragraph 10 is admitted to the extent it provides a generic explanation of a bill-and-keep mechanism but is denied to the extent it implies that a bill-and-keep

arrangement existed between KMC and Sprint for all or part of the relevant time period. By way of further answer, KMC states that the parties have never been governed by a bill-and-keep arrangement while KMC operated under the FDN Agreement. Rather, the parties have operated pursuant to a May 2002 settlement agreement regarding reciprocal compensation and, for the entire period in question, actual compensation has been required for the transport and termination of local traffic.

11. The allegations in paragraph 11 contain conclusions of Sprint to which no response is required, but to the extent that a response is required, the allegations are denied. KMC states by way of further response that this paragraph consists of generic statement and contains no allegations against KMC. To the extent that Sprint intended the generic statements in this paragraph to be characterizations of KMC or its actions, KMC states by way of further response that it did not improperly, intentionally, purposefully, or knowingly terminate interexchange traffic as local traffic or avoid proper payment altogether, but instead terminated only traffic properly treated as local traffic and subject to reciprocal compensation over the local interconnection trunks established with Sprint under the parties' interconnection agreements. To the extent that KMC did not pay reciprocal compensation because Sprint failed to bill KMC for traffic terminated over local interconnection trunks because it was under the erroneous conclusion that the parties operated under a bill-and-keep arrangement, the fault lies exclusively with Sprint.

12. KMC admits the allegations contained in sentences 1 and 2 of paragraph 12 as generally accurate descriptions of most calls, but further states that the calling party number and the charge party number are not the only numbers processed and transferred with each call. KMC lacks sufficient information to admit or deny the allegations contained in sentences 3 and 4

of paragraph 12, but asserts that the procedure stated in the Complaint for determining call jurisdiction is not the industry standard. KMC denies the allegations contained in sentence 5 of paragraph 12. The allegations in sentences 6 and 7 of paragraph 12 contain conclusions of Sprint to which no response is required, but to the extent that a response is required, the allegations are denied. KMC lacks sufficient information to admit or deny the allegations contained in sentence 8 of paragraph 12. KMC states by way of further response that use of the calling party number to determine the originating point of a call is the industry standard. Sprint's use of the charge party number for that purpose is unwarranted and will incorrectly identify the originating point of many calls and therefore identify many calls as interexchange or interstate that are, in fact, local or intrastate, respectively. The charge party number is simply used to identify the telephone number associated with the *end user* customer account and has no inherent relationship to billing rate for intercarrier compensation or, more to the point, the origination of a call. As Sprint argues, the calling party number is often used as one of the two pieces of information (the other being the terminating number) to determine the jurisdictional nature of telecommunications traffic, although KMC emphasizes that certain traffic traversing exchange boundaries, such as enhanced services traffic, is subject to treatment as local traffic. KMC denies the remaining allegations of paragraph 12.

13. KMC lacks sufficient information to admit or deny the allegations contained in sentences 1-5, 7, and 8, of paragraph 13, but to the extent that a response is required, the allegations are denied. KMC denies the remaining allegations contained in paragraph 13. KMC lacks sufficient knowledge to admit or deny the allegations contained in footnote 8, referenced in paragraph 13, but to the extent that a response is required, the allegations are denied. Footnote 9, referenced in paragraph 13, contains statements to which no response is required. By way of

further response, KMC states that the originating line information and charge party number information associated with the traffic delivered to Sprint by KMC was not altered by KMC. As a general matter, Sprint had all of the call detail information regarding traffic delivered over local interconnection trunks needed to determine the jurisdictional nature of the traffic consistent with the methods described in its Complaint and, more importantly, consistent with industry standards (i.e., using calling party number information). On information and belief, Sprint failed to use this call detail information appropriately, if at all, to determine the jurisdictional nature of the traffic and which entity to bill. KMC states by way of further answer that the IXCs in the call scenarios that Sprint describes in this paragraph are the parties, if any, that are subject to the access charges that Sprint claims it is owed. On information and belief, for some of this traffic, Sprint's IXC affiliate was the IXC carrying the traffic and, thus, Sprint's own affiliate owes Sprint for access charges. By way of additional further answer, KMC states that its switches in Tallahassee and Ft. Myers properly inserted into the charge party number field of the SS7 signaling information the billing telephone number KMC associated with the PRI circuits it provided its customer generating the traffic at issue in Sprint's Complaint.

14. KMC lacks sufficient information to admit or deny the allegations contained in paragraph 14, but to the extent that a response is required, the allegations are denied.

15. KMC denies the allegations in sentence 1 of paragraph 15. KMC lacks sufficient information to admit or deny the allegations contained in sentence 2 of paragraph 15. By way of further response, KMC states that Sprint received the necessary signaling information regarding the traffic terminated to Sprint to determine whether the traffic was local, interstate, or intrastate traffic. Assuming Sprint's allegations are true, Sprint's classification of this traffic as "unknown" and applying PIU and PLU factors to it was Sprint's own mistake, to which KMC

did not contribute. However, in cases where the originating line information was not available allowing Sprint to determine, using accepted industry standards, the jurisdictional nature of the traffic, the parties' agreements allowed for and recognized the use of PIU and PLU factors to allocate traffic for purposes of intercarrier compensation.

16. Sentence 1 of paragraph 16 contains characterizations of documents that speak for themselves and to which no response is required, but to the extent that a response is required, the allegations are denied. Sentences 2 and 3 of paragraph 16 contain conclusions of law to which no response is required, but to the extent that a response is required, the allegations are denied. By way of further response, KMC states that upon information and belief the traffic in question was sent to KMC by an enhanced services provider over end user PRI circuits. KMC was entitled to accept the traffic as end user enhanced services traffic and to send it to Sprint over local interconnection trunks. In addition, it would be perfectly legitimate for an IXC to route traffic to KMC for termination to Sprint. Such traffic is called transit traffic, and both KMC and Sprint carry transit traffic received from third-party carriers, including but not limited to IXCs, destined for termination on the other party's network.

17. KMC denies the allegations contained in sentence 1 of paragraph 17. Sentence 2 of paragraph 17 contains conclusions of law and characterizations of documents that speak for themselves to which no response is required, but to the extent that a response is required, the allegations are denied.

18. KMC denies the allegations contained in sentence one of paragraph 18. KMC lacks sufficient information to admit or deny the allegations contained in sentence two of paragraph 18 and footnote 10, referenced in paragraph 18.

19. The first two sentences of paragraph 19 consist of characterizations of documents that speak for themselves to which no response is required, but to the extent that a response is required, the allegations are denied, except that KMC admits that it received the letter contained in Attachment 5 to Sprint's Complaint. KMC admits, as alleged in the third sentence of paragraph 19 that it filed a dispute regarding Sprint's claims in its letter dated November 6, 2003, and that a conference call between Sprint and KMC occurred on or about January 28, 2004. KMC denies the remaining allegations in the third sentence of paragraph 19. KMC admits that it received from Sprint, on or about February 23, 2004, a CD purporting to contain call record data from a four (4) hour period on or about September 10, 2003. To the extent that the fourth sentence of paragraph 19 consists of characterizations of documents that speak for themselves to which no response is required, but to the extent that a response is required, the allegations are denied. KMC denies the allegations in the last sentence of paragraph 19.

20. KMC admits that it had communications with KMC after February 23, 2004, but denies the remaining allegations of the first sentence of paragraph 20. KMC denies the remaining allegations of paragraph 20, except that KMC admits that it received a demand letter from Sprint dated April 30, 2004, which is contained in Attachment 6 to Sprint's Complaint.

21. Sentences 1-4 of paragraph 21 contain conclusions of law and characterizations of documents that speak for themselves to which no response is required, but to the extent that a response is required, the allegations are denied. KMC admits the allegations in the fifth sentence of paragraph 21, to the extent that Sprint alleges that the parties took into account the ISP Remand Order when negotiating the May 2002 settlement agreement regarding reciprocal compensation, i.e., Amendment No. 1. Otherwise, KMC denies the allegations in the fifth sentence of paragraph 21. KMC states by way of further response that Amendment No. 1 speaks

for itself. KMC admits the allegations in the sixth sentence of paragraph 21 to the extent that Sprint alleges that it charged KMC these rates during the period July 2002-June 2003. Otherwise, KMC denies the allegations in the fifth sentence of paragraph 21. KMC denies the allegations in the seventh sentence of paragraph 21. KMC states by way of further response that reciprocal compensation between the parties while KMC operated pursuant to the FDN Agreement was governed by the parties' May 2002 settlement agreement. The parties have not exchanged traffic on a bill-and-keep basis while under the FDN Agreement. KMC denies the allegations in the final sentence of paragraph 21. KMC states by way of further response that the treatment of the traffic in question is governed by the parties' May 2002 settlement agreement, which document speaks for itself.

22. KMC denies the allegations contained in paragraph 22.

COUNT I

23. KMC incorporates its responses to paragraphs 1-22 by reference as if fully stated herein.

24. The allegations in paragraph 24 contain characterizations of and quotations to documents that speak for themselves and to which no response is required, but to the extent that a response is required, the allegations are denied.

25. The allegations in paragraph 25 contain characterizations of documents that speak for themselves and to which no response is required, but to the extent that a response is required, the allegations are denied.

26. The allegations in paragraph 26 contain characterizations of documents that speak for themselves and legal conclusions to which no response is required, but to the extent that a response is required, the allegations are denied.

27. The allegations in paragraph 27 contain quotations from documents that speak for themselves and to which no response is required, but to the extent that a response is required, the allegations are denied.

28. The allegations in paragraph 28 contain quotations from and characterizations of documents that speak for themselves and to which no response is required, but to the extent that a response is required, the allegations are denied.

29. The allegations in paragraph 29 contain characterizations of documents that speak for themselves and legal conclusions to which no response is required, but to the extent that a response is required, the allegations are denied.

30. KMC lacks sufficient information to admit or deny the allegations contained in sentence 1 of paragraph 30. KMC denies the allegations contained in sentence 2 of paragraph 30.

31. KMC denies the allegations contained in paragraph 31. KMC lacks sufficient information to admit or deny the allegations contained in footnote 12, referenced in paragraph 31, but to the extent that a response is required, the allegations are denied.

32. The allegations in paragraph 32 contain characterizations of documents that speak for themselves and legal conclusions to which no response is required. KMC denies the remaining allegations contained in paragraph 32.

COUNT II

33. KMC incorporates its responses to paragraphs 1-32 by reference as if fully stated herein.

34. The allegations in paragraph 34 contain characterizations of documents that speak for themselves and legal conclusions to which no response is required, but to the extent that a response is required, the allegations are denied.

35. The allegations in paragraph 35 and footnote 13 contain characterizations of documents that speak for themselves and conclusions of law to which no response is required, but to the extent that a response is required, the allegations are denied.

36. KMC denies the allegations contained in paragraph 36. KMC lacks sufficient information to admit or deny the allegations contained in footnote 14, referenced in paragraph 36, but to the extent that a response is required, the allegations are denied.

37. The allegations in paragraph 37 contain characterizations of documents that speak for themselves and legal conclusions to which no response is required. KMC denies the remaining allegations contained in paragraph 37.

COUNT III

38. KMC incorporates its responses to paragraphs 1-37 by reference as if fully set forth herein.

39. The allegations in paragraph 39 contain characterizations of documents that speak for themselves and conclusions of law to which no response is required, but to the extent that a response is required, the allegations are denied.

40. The allegations in paragraph 40 contain characterizations of documents that speak for themselves and conclusions of law to which no response is required, but to the extent that a response is required, the allegations are denied.

41. KMC denies the allegations contained in paragraph 41. KMC lacks sufficient information to admit or deny the allegations contained in footnote 15, referenced in paragraph 41, but to the extent that a response is required, the allegations are denied.

42. KMC incorporates its responses to paragraphs 13-18 by reference as if fully set forth herein and denies the allegations contained in paragraph 42.

43. The allegations in paragraph 43 contain legal conclusions to which no response is required. KMC denies the remaining allegations contained in paragraph 43.

44. All allegations not expressly admitted are hereby denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

45. Sprint's claim fails to state a claim upon which relief may be granted.

Second Affirmative Defense

46. Sprint's claim is barred by the doctrines of laches.

Third Affirmative Defense

47. Sprint's claim is barred by the doctrine of unclean hands.

Fourth Affirmative Defense

48. Sprint's claim is barred by the doctrine of estoppel.

Fifth Affirmative Defense

49. Sprint's claim is barred by the doctrine of waiver.

Sixth Affirmative Defense

50. Sprint's claim is barred due to its failure to mitigate damages.

Seventh Affirmative Defense

51. The Florida Public Service Commission lacks jurisdiction over the traffic in question and over Sprint's claims.

Eighth Affirmative Defense

52. Sprint's claim is barred because its bills were untimely in violation of federal and state law requiring its billing practices to be just and reasonable.

Ninth Affirmative Defense

53. KMC reserves the right to assert any further, additional, affirmative defenses it becomes aware of during the course of discovery in this proceeding.

REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth in the foregoing Answer and Affirmative Defenses to Sprint-Florida Incorporated's Complaint, the Commission should deny each and every aspect of the relief requested by Sprint, with prejudice, and terminate this proceeding.

COUNTERCLAIM OF KMC TELECOM III, LLC, KMC TELECOM V, INC. AND KMC DATA LLC

KMC Telecom III, LLC, KMC Telecom V, Inc. and KMC Data LLC (collectively "KMC"), by and through their undersigned counsel and pursuant to Rules 25-22.036, 28-106.108 and 28-106.204, Florida Administrative Code, and the Commission's Order No. PSC-04-0608-PCO-TP, Docket No. 031125-TP, hereby file this Counterclaim against Sprint-Florida, Incorporated ("Sprint") and Sprint's IXC affiliate, Sprint Communications Company, Limited Partnership d/b/a Sprint ("Sprint IXC") (collectively, "the Sprint companies") seeking an order (1) finding that Sprint is in violation of its Interconnection Agreement with KMC by intentionally and knowingly misrouting interexchange telephone traffic to KMC as local traffic, thus avoiding and underpaying access charges due to KMC; (2) finding that Sprint is in violation of Section 364.16(3), Fla. Stat. for knowingly delivering traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service; (3) finding that Sprint IXC

has, in KMC markets where Sprint is not the ILEC, intentionally and knowingly misrouted interexchange telephone traffic to KMC as local traffic, thus avoiding and underpaying access charges due to KMC; (4) finding that Sprint has unlawfully, and in violation of its settlement with KMC, withheld reciprocal compensation payments from KMC; and (5) requiring the Sprint companies to pay KMC all amounts due for the avoided access charges and reciprocal compensation payments. In support of this counterclaim KMC hereby alleges:

INTRODUCTION

1. Sprint-Florida, Incorporated (“Sprint”) holds a certificate of public convenience and necessity from this Commission to provide local exchange services. Sprint’s IXC affiliate, Sprint Communications Company, Limited Partnership d/b/a Sprint (“Sprint IXC”) holds a certificate of public convenience and necessity from this Commission to provide interexchange telecommunications services. According to the records of this Commission, the company contact for the Sprint companies is the same: (MC FLTLHO0107), P. O. Box 2214, Tallahassee FL 32316-2214. This Commission’s records also identify the same website for both companies: <http://www.sprint.com>, and this website touts the integration of local and interexchange telecommunications services available from the company. While both companies may be separate corporate entities, there is no disputing the fact that Sprint and Sprint IXC are part of the same corporate family with common ownership and direction.

A. The Access Charges Claims

2. **Sprint’s Complaint against** KMC filed in this docket on September 24, 2004, alleges that KMC has avoided paying Sprint access charges for interexchange traffic transported to Sprint by KMC and terminated by Sprint to Sprint end users or other local customers. Sprint

further alleges that KMC's actions have violated the terms of its interconnection agreements with Sprint, Sprint's tariffs, and Section 364.16(3), Florida Statutes.

3. KMC's analysis of the issues raised by Sprint has revealed that, even if Sprint's allegations as to the calling party NPAs and the called party NPAs are correct, access charges are not owed under the terms of federal law and the parties' interconnection agreements since the traffic at issue was generated by a KMC end user customer holding itself out as an enhanced service provider.

4. In conjunction with its analysis of the traffic data KMC delivered to Sprint that Sprint alleges as the basis for its Complaint, KMC also examined the traffic Sprint terminated to KMC in Tallahassee and Ft. Myers. KMC conducted a comparative analysis of the traffic Sprint was delivered to KMC in these markets over both local interconnection and toll trunks. As an initial matter, this investigation revealed that, in the Tallahassee and Ft. Myers markets, Sprint is effectively no longer terminating any Sprint IXC traffic to KMC over the toll trunks and that the access revenues from Sprint IXC now approach zero. Indeed, Sprint IXC traffic is now coming over the Sprint local interconnection trunks. KMC expanded its investigation of Sprint IXC to all of the KMC Florida Markets back through early 2002. The resulting analysis found that there were gross, often abrupt, and inexplicable swings in the number of Sprint IXC minutes being sent to KMC for termination over the interexchange traffic between KMC and Sprint, while the numbers of KMC end user access lines in these markets remained generally constant. The analysis can be summarized as follows:

Access lines in service for Tallahassee	03/02 - 01/05 -	24.00% fewer lines
Access minutes of use for Tallahassee	03/02 - 01/05 -	100% fewer minutes
Access lines in service for Ft. Myers	03/02 - 01/05 -	8% more lines
Access minutes of use for Ft. Myers	03/02 - 01/05 -	68% fewer minutes

Access lines in service for Clearwater	03/02 - 01/05 -	8.1% more lines
Access minutes of use for Clearwater	03/02 - 01/05 -	75% fewer minutes
Access lines in service for Pensacola	03/02 - 01/05 -	4.75% fewer lines
Access minutes of use for Pensacola	03/02 - 01/05 -	99.9% fewer minutes
Access lines in service for Melbourne	03/02 - 01/05 -	19% fewer lines
Access minutes of use for Melbourne	03/02 - 01/05 -	98.5% fewer minutes
Access lines in service for Sarasota	03/02 - 01/05 -	2.4% fewer lines
Access minutes of use for Sarasota	03/02 - 01/05 -	68.6% fewer minutes

5. In order to determine the cause of the significant declines in terminating access minutes of use, KMC more closely analyzed traffic delivered from Sprint over local interconnection trunks at KMC's Tallahassee, Florida switch location. KMC's Office Records contain circuit inventory records that identify each Sprint interconnection trunk based on the originating and terminating point codes (OPC and DPC), the provisioned traffic direction, and the utilization description for each trunk. In order to collect information that KMC does not generally record in its switch Automatic Message Accounting ("AMA") records, KMC physically located SS7 monitoring equipment in the KMC Tallahassee Central Office and recorded one (1) month of SS7 activity on these and other trunks.

6. KMC utilized the data collected by the SS7 monitoring equipment to conduct a detailed analysis (herein referred to as the "Study") of the traffic being sent over Sprint's local inbound interconnection trunks. The intent of the Study was to identify the root cause of the drastic decreases in switched access traffic being terminated to KMC in the Tallahassee calling area. The SS7 information was analyzed to determine the jurisdiction of the calls included in the defined study period based on the LERG 6 LATA and STATE field definition for each SS7 call record's Calling Party Number (NPA/NXX) and Called Party NPA/NXX.

7. Analysis of the SS7 data demonstrated that a significant number of calls sent to KMC from Sprint over Sprint's local interconnection trunks were originated in another state (Interstate) or another Florida LATA (Intrastate InterLATA). The SS7 call records used in the study did not contain the required Carrier Identification Code (CIC) fields for the Interstate, Intrastate, and InterLATA call records. As a result, KMC was unable to identify the Interexchange Carrier (IXC) that carried the calls. In order to determine the IXC, and the corresponding CIC, associated with the originating caller's Calling Party Number (CPN) for the Study data, KMC traced terminating access usage records between the two local calling areas identified in the Sprint Complaint, Fort Meyers and Tallahassee.

8. KMC mapped the Study data for Tallahassee to a second set of call records for Fort Meyers, which contained the appropriate IXC CIC data correlated with Calling Party Number information. The comparison data included the Terminating Access Usage Records (AURs) which are recorded on KMC's behalf in Fort Meyers by the tandem service provider, Sprint, and provided to KMC for KMC's use in invoicing IXCs for switched access charges on inbound Interstate, Intrastate, and InterLATA calls that terminate to KMC's customers through Sprint's Access Tandem via the Carrier Access Billing ("CABs") process. The intent of the mapping was to determine if SS7 Calling Party Numbers for traffic terminated to KMC in Tallahassee could be matched to Terminating AUR Calling Party Numbers for Fort Meyers, thus enabling KMC to identify the IXC CIC in the matching AUR record. Analysis of the matching AUR records demonstrated that Sprint's IXC entity was among the IXCs whose Interstate, Intrastate, and InterLATA traffic was being routed to KMC from Sprint via local interconnection trunks during the Study period.

9. KMC's analysis demonstrated that the switched access traffic decline was due to re-routing of switched access traffic via the local interconnection trunk groups. The Study identified obvious re-routing of switched access in Tallahassee by Sprint. This drastic decline in switched access traffic prompted KMC to conduct a trend analysis ("Trend Analysis") of historical Sprint IXC terminating switched access minutes of use ("MOUs") billing volumes in other markets in which KMC operates as a local exchange carrier in Florida.

10. The trend analysis considered six KMC Florida markets, Clearwater, Pensacola, Melbourne, Sarasota, Fort Myers, and Tallahassee, for the period of March 19, 2002 through January 19, 2005. The Trend Analysis of the Sprint IXC Terminating MOU volumes demonstrated drastic volume declines, with only minor fluctuations, in monthly terminating of MOUs for each of the KMC Florida markets, as generally described in paragraph 3. In order to ensure that the Sprint IXC terminating access MOU volume fluctuations was not attributable to KMC Customer Access Line fluctuations within the trend analysis markets, KMC performed a volume trend analysis of KMC's in-service Access Lines for the period from January 2002 through December 2004. KMC's analysis of its Access Lines in Service counts for the study markets confirmed that the Sprint IXC Terminating MOU reductions and fluctuations were not due to changes in KMC's in-service access line volume.

11. The Trend Analysis indicates that Sprint's utilization of local interconnection facilities for the termination of Sprint's IXC Interstate, Intrastate, and InterLATA calls in KMC's Florida markets has resulted in a significant and ongoing switched access avoidance for terminating switched access charges that are payable to KMC by Sprint's IXC. The nature and volume of the differences in access charges can lead to no conclusion but that Sprint was knowingly and intentionally re-routing switched access traffic via its local interconnection trunk

groups in Tallahassee and Ft. Myers, and that Sprint IXC was diverting traffic from ILEC tandems to make it look to terminating LECs that the traffic was local in markets around the state. Given the total and complete elimination of all access traffic in some instances, and the fluctuations in traffic carried over toll trunks over time (where it appears that the Sprint companies are moving traffic off, on, then back off the trunks), there is no evidence that the access traffic being redirected is enhanced services traffic, unlike the traffic at issue in Sprint's Complaint.

12. This Counterclaim is appropriate because, despite the fact that Sprint has not engaged in an Audit as required by the relevant interconnection agreements, Sprint filed a Complaint alleging that KMC avoided paying Sprint access charges for interexchange traffic transported to Sprint by KMC and terminated by Sprint to Sprint end users. Despite objections by KMC, the Commission has allowed Sprint's Complaint to go forward. Thus, this Counterclaim provides the only means by which KMC's interests as to allegations of misidentification of interexchange traffic can be completely resolved. Given the Commission's limited hearing schedule, it is necessary to resolve the disputes within the instant proceeding to promote judicial efficiency, minimize the cost and expense in litigating the disputes, and ensure consistent treatment of the two complaints.

B. The Reciprocal Compensation Claims

13. On May 8, 2002, KMC and Sprint executed a confidential Memorandum of Understanding ("MOU") that resolved several then pending disputes between the parties. Relevant to KMC's counterclaim, Sprint and KMC agreed that for purposes of their interconnection agreements that the FCC's ISP Order (Order FCC 01-131, adopted April 18, 2001) would be deemed effective in Florida on May 1, 2002. Pursuant to this settlement, Sprint

and KMC executed Amendment No. 1, dated June 26, 2002, to specifically implement the ISP reciprocal compensation provisions of the MOU. The amendment specified the rates for the exchange of local interconnection traffic as well as Information Access Traffic. As Sprint has alleged in its Complaint, at that time the local interconnection arrangements of the parties were governed by KMC's adoption of the MCImetro Access Transmission Services, Inc. interconnection agreement effective April 1, 1999.

14. Sprint made reciprocal compensation payments to KMC pursuant to the MOU and the implementing Amendment 1 until such time as KMC opted into the FDN interconnection agreement in July 2003. Subsequent to this adoption, Sprint has refused to pay KMC for the reciprocal compensation due and owing under the MOU.

15. This Counterclaim is appropriate because Sprint has refused to pay KMC the reciprocal compensation due under the MOU and the settlement represented by that document. In view of Sprint's present claims against KMC, which include necessary adjustments to reciprocal compensation amounts paid and not paid, this Counterclaim provides a reasonable and effective means of resolving in a single proceeding any and all adjustments in prior compensation paid and not paid by the parties. Given the Commission's limited hearing schedule, a resolution of this Counterclaim in this instant proceeding will promote judicial efficiency, minimize the cost and expense in litigating the disputes, and ensure consistent treatment of the two complaints.

COUNT I
Violation of Interconnection Agreements

16. KMC realleges the allegations made in paragraphs 1 through 13 of this Counterclaim as though fully set forth herein.

17. As set forth in some detail in Sprint's Complaint and in KMC's Motion to Dismiss Sprint's Complaint, Sprint has been a party to two interconnection agreements with KMC applicable to this dispute. Both of those agreements call for payment of access charges for the termination of interexchange traffic, and both call for Sprint to route interexchange traffic and local traffic to KMC over separate trunks.

18. From March, 2002 through January, 2005, Sprint misdirected interexchange traffic to KMC over local interconnection trunks. However, as set forth herein, such traffic was, in fact, interexchange traffic, for which Sprint was required to pay access charges to KMC. Thus, Sprint's misdirection of the interexchange traffic over its local trunks constitutes a violation of Sprint's interconnection agreements with KMC. KMC has estimated the amount of access charges so avoided at [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], plus interest, for the period from March 2002 through January 19, 2005. Sprint continues to route traffic carried by its IXC entity to KMC via its local interconnection trunk. Therefore, KMC reserves the right to amend this count to include additional amounts that accrue beyond January 19, 2005.

COUNT II
Violation of section 364.16(3), Florida Statutes

19. KMC realleges the allegations made in paragraphs 1 through 19 of this Counterclaim as though fully set forth herein.

20. Section 364.16(3)(a), Fla. Stat., provides that:

No local exchange telecommunications company or alternative local exchange telecommunications company shall knowingly deliver traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service.

21. Furthermore, Section 364.16(3)(b), Fla. Stat. provides that:

Any party with a substantial interest may petition the commission or an investigation of any suspected violation of paragraph (a). In the event any certificated local exchange service provider knowingly violates paragraph (a), the commission shall have jurisdiction to arbitrate bona fide complaints arising from the requirements of the subsection and shall, upon such complaint have access to all relevant customer records and accounts of any telecommunications company.

22. The evidence in this case demonstrates that between March 2002 and January, 2005, Sprint implemented a scheme by which it delivered interexchange traffic to KMC over its local interconnection trunks. As set forth herein, Sprint should have paid KMC access charges for the termination of interexchange traffic.

23. Based on the gross and otherwise inexplicable decline in monthly interexchange traffic occurring over the period from March, 2002 through January, 2005, KMC alleges that Sprint knew that traffic delivered to KMC over local trunk lines was, in fact, interexchange traffic, and that such traffic was knowingly delivered over local trunk lines with the knowledge and intent that such method of delivery would result in the avoidance of payment of the applicable access charges to KMC.

24. Based on the foregoing, Sprint has violated Section 364.16(3)(a), Fla. Stat., by knowingly delivering traffic for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service. KMC has estimated the amount of access charges so avoided at [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], plus interest, for the period from March 2002 through January 19, 2005. Sprint continues to route traffic carried by

its IXC entity to KMC via its local interconnection trunk. Therefore, KMC reserves the right to amend this count to include additional amounts that accrue beyond January 19, 2005.

Count III
Violation of Confidential Settlement and Release Agreement

25. KMC realleges the allegations made in paragraphs 1 through 2 and 13 through 15 of this Counterclaim as though fully set forth herein.

26. KMC and Sprint did, by adoption of the Confidential Settlement and Release Agreement agree and settle that the parties would pay reciprocal compensation to each other for ISP bound traffic. This document is binding by its terms and has not been superseded by any subsequent agreement of the parties.

27. Based on the foregoing, Sprint has violated the Confidential Settlement and Release Agreement by ceasing to make the necessary reciprocal compensation payments due and owing to KMC. KMC has estimated the amount of reciprocal compensation due an owing to KMC to be [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], plus interest, for the period from May, 2002 through June, 2005. Sprint continues to refuse to compensate KMC for the ISP traffic that it terminates on behalf of Sprint's customers. Since KMC's analysis is ongoing, KMC reserves the right to amend this count to include any additional amounts that may be due.

COUNT IV
Failure to Pay Tariffed Charges

28. KMC realleges the allegations made in paragraphs 1 through 24 of this Counterclaim as though fully set forth herein.

29. During the entire period, March 2002 through the present, KMC has had on file with the Florida Public Service Commission access tariffs by which KMC provides IXCs access

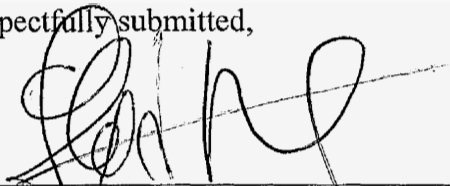
services and assesses charges for such services. KMC's access tariff call for payment of access charges by IXCs for KMC's termination of interexchange traffic to KMC end users, whether the traffic is handed off by the IXC directly, or through other providers, for example through an incumbent LEC's access tandem switch, before being routed to KMC for termination.

30. From March, 2002 through January, 2005, Sprint IXC misdirected interexchange traffic through arrangements that ensured KMC received Sprint IXC's interexchange traffic over local interconnection trunks that KMC maintained with incumbent local exchange carriers. Under KMC's tariffed terms, and conditions in effect during the relevant period, Sprint IXC was required to pay access charges to KMC for such traffic. Through Sprint IXC's misdirection of the interexchange traffic such that KMC received such traffic over local interconnection trunks, KMC was unable to bill Sprint IXC as provided for in KMC's tariffed terms and conditions. Nonetheless, by terminating the Sprint IXC interexchange traffic received over local interconnection trunks, KMC provided Sprint IXC with access services. Sprint IXC's use of KMC's access services without paying therefore constitutes a violation of KMC's tariffed terms and conditions on file with the Commission. KMC has estimated the amount of access charges so avoided by Sprint IXC at [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], plus interest, for the period from March 2002 through January 19, 2005. Sprint IXC continues to route interexchange traffic indirectly to KMC through arrangements designed to ensure that KMC receives such traffic over local interconnection trunks. Therefore, KMC reserves the right to amend this count to include additional amounts that accrue beyond January 19, 2005.

PRAYER FOR RELIEF

KMC respectfully requests that the Commission (1) find Sprint to be in violation of its interconnection agreements with KMC by misdirecting interexchange traffic over its local trunks, thereby disguising that traffic as local traffic and avoiding access charges called for in the interconnection agreements; (2) find Sprint to be in violation of Section 364.16(3)(a), Fla. Stat. for knowingly delivering traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service; (3) find that Sprint has unlawfully, and in violation of its settlement with KMC, withheld reciprocal compensation payments from KMC; (4) find that Sprint IXC has violated KMC's tariff; (5) reject Sprint's disputes; (6) require Sprint to pay the sums identified herein for the unpaid access charges and reciprocal compensation, plus interest at the maximum statutory rate; and (7) fashion such other relief as the Commission finds to be just and equitable under the circumstances.

Respectfully submitted,



Floyd R. Self
E. Gary Early
Messer, Caparello & Self, P.A.
Post Office Box 1876
Tallahassee, FL 32302-1876
Telephone: (850) 222-0720
Facsimile: (850) 224-4359
e-mail: fself@lawfla.com
e-mail: gearly@lawfla.com

Edward A. Yorkgitis, Jr.
Barbara A. Miller
Kelley Drye & Warren LLP
1200 19th Street, N.W., Fifth Floor
Washington, D.C. 20036
Telephone: (202) 955-9600
Facsimile: (202) 955-9792
e-mail: cyorkgitis@kelleydrye.com
e-mail: bmiller@kelleydrye.com

and

Marva Brown Johnson
KMC Telecom Holdings, Inc.
1755 North Brown Road
Lawrenceville, GA 30043
Telephone: (678) 985-6220
Facsimile: (678) 985-6213
e-mail: marva.johnson@kmctelecom.com

Attorneys for KMC Telecom III LLC,
KMC Telecom V, Inc., and KMC Data LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been served upon the following parties by hand delivery (*), electronic mail (**) and/or U.S. Mail this 28th day of February, 2005.

Lee Fordham, Esq.*
General Counsel's Office, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Dovie L. Rockette-Gray*
General Counsel's Office, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Ms. Nancy Pruitt*
Division of Competitive Markets and Enforcement
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Susan Masterton, Esq.**
Sprint-Florida, Incorporated
1313 Blair Stone
Tallahassee, FL 32301

Floyd R. Self

