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January 13, 2006

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
& Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 041144-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint-Florida, Incorporated is Sprint's Response to KMC's Motion for Reconsideration and Request for Oral Argument, and Sprint-Florida's Cross-Motion for Reconsideration.

Copies are being served on the parties in this docket pursuant to the attached certificate of service.

If you have any questions regarding this electronic filing, please do not hesitate to call me at 850-599-1560.

Sincerely,

A handwritten signature in black ink that reads "Susan S. Masterton". The signature is written in a cursive, somewhat stylized script.

Susan S. Masterton

Enclosure

**CERTIFICATE OF SERVICE
DOCKET NO. 041144-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. mail this 13th day of January, 2006 to the following:

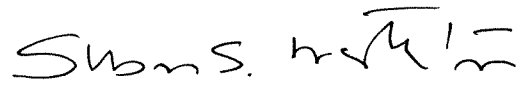
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Susan S. Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Sprint-Florida, Incorporated)	Docket No. 041144-TP
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.)	Filed: January 13, 2006
_____)	

SPRINT-FLORIDA, INCORPORATED'S RESPONSE TO KMC'S MOTION FOR RECONSIDERATION AND REQUEST FOR ORAL ARGUMENT AND SPRINT-FLORIDA, INCORPORATED'S CROSS-MOTION FOR RECONSIDERATION

Pursuant to Rule 25-22.060, F.A.C., Sprint-Florida, Incorporated (hereinafter "Sprint") hereby files its Response to KMC's Motion for Reconsideration and Request for Oral Argument and its Cross-Motion for Reconsideration.¹

INTRODUCTION AND SUMMARY

KMC has asked the Commission to reconsider portions of Order No. PSC-05-1234-FOF-TP as it relates to four issues. First, KMC asks the Commission to reconsider its decision in Issue 4 that the end points determine the jurisdiction of a call, specifically an enhanced services call. (KMC Motion at pages 6 and 7). Second, KMC asks the Commission to reconsider its decision in Issue 6 concerning whether the traffic at issue is enhanced services traffic. (KMC Motion at pages 3-6) Regarding this issue KMC asks that the Commission reconsider its assignment of the burden of proof as to the nature of the traffic (KMC Motion at pages 3 and 4) and also to reconsider its finding that the nature of the traffic cannot be determined by the evidence in the record. (KMC Motion at

¹ KMC served Sprint with its Motion via e-mail on January 3, 2006 meaning that Sprint's Response would be due on January 10, 2006. However, on January 6, 2006, Sprint filed a Motion for Extension of Time to file its Response on January 13, 2006, which KMC's counsel stated KMC did not oppose.

pages 4-6) In its arguments for reconsideration of these issues KMC has failed to meet the standard for reconsideration of a Commission Order in that KMC has failed to identify a point of fact or law that the Commission has overlooked or failed to consider in rendering its decision. In its Motion KMC merely reargues the points it made in its testimony and briefs. As discussed in this Response, the Commission fully considered these arguments in rendering its decision. Therefore, KMC's Motion for Reconsideration of these issues should be denied. In its Cross-Motion for Reconsideration, Sprint demonstrates that in its ruling on Issue 6 the Commission overlooked or failed to consider record evidence produced by Sprint that demonstrates that at least certain calls identified by Sprint were long distance voice calls. The Commission should grant Sprint's Cross-Motion for Reconsideration of the Commission's findings of fact regarding this evidence.

KMC also asks the Commission to reconsider its decision in Issues 8 and 10 that the amount of compensation due Sprint for the traffic be determined by an independent third party auditor. (KMC Motion at pages 8 and 9). Sprint also believes that it will be difficult for the parties to agree on an independent auditor using the process set forth in the Commission Order. In its Cross-Motion for Reconsideration, Sprint asks the Commission to reconsider its findings regarding the sufficiency of Sprint's calculations and also reconsider whether an audit is necessary at all. To the extent that Sprint's Cross-Motion for Reconsideration is denied, Sprint suggests that rather than an audit conducted by the Commission staff, the Commission should engage an independent auditor to conduct the audit, with the audit expenses to be shared by the parties.

Finally, while KMC has asked for reconsideration on several points, it has not asked the Commission to reconsider its decision on Issue 7, regarding whether Sprint's

tariffed access charges are due under the interconnection agreement, or on Issue 8 and 10 as they relate to the Commission's decision that KMC violated the terms of its interconnection agreements with Sprint. Therefore, even if the Commission were to grant KMC's Motion in its entirety, it would not change the Commission's ultimate decision that under the provisions of the interconnection agreements, KMC must pay Sprint its tariffed access charges and refund reciprocal compensation overpayments for the traffic.

STANDARD FOR MOTION FOR RECONSIDERATION

As the Commission has recognized consistently in its rulings on Motions for Reconsideration, the standard for granting reconsideration is that the Motion must identify some point of fact or law that the Commission overlooked or failed to consider in rendering its Order. See, *Stewart Bonded Warehouse v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So. 2d 161 (Fla. 1st DCA 1981). The Commission has held that it is not a sufficient basis for a Motion for Reconsideration that the movant merely believes that a mistake was made nor is it appropriate for the movant to reargue the same points of fact or law that were considered in the original ruling. See, *Stewart Bonded Warehouse* at 317; *State ex.rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958).

ARGUMENT

A. ISSUES 4 AND 6

1. Burden of Proof

KMC argues that the Commission failed to consider the appropriate assignment of the burden of proof in this case. (KMC Motion at pages 3 and 4) Contrary to KMC's assertion, this issue was fully addressed by the Commission in its Order. (Order at pages

39-40) The Commission correctly found that Sprint had the burden of demonstrating by a preponderance of the evidence that the traffic at issue was not local traffic and, therefore, that it was traffic subject to access charges under the law and the parties' interconnection agreements. (Order at page 39) While KMC alleges that Sprint produced no competent substantial evidence on this point, KMC's assertion are erroneous, in that Sprint produced copious evidence that the calls originated and terminated in different local callings areas. In fact, KMC did not dispute this point. (Order at pages 27 and 31) Rather, KMC argued that, despite the demonstrated interexchange nature of the traffic, it was exempt from the access charges that would normally apply because it was "enhanced services" traffic. (Order at page 32) The Commission correctly held that this assertion was an affirmative defense² and that, under the relevant evidentiary standard and the terms of the interconnection agreements and Commission orders, KMC bears the burden of proving this assertion. (Order at pages 39 and 40) Again, the Commission correctly found that the hearsay evidence offered by KMC was insufficient to meet this burden. (Order at page 40)³

KMC argues that the hearsay evidence it presented concerning the nature of the traffic somehow becomes competent, direct evidence because self-certification (i.e., hearsay) is the "industry standard for determining the nature of the traffic." (KMC

² Black's Law Dictionary defines an "affirmative defense" as a "matter asserted by the defendant which, assuming the complaint to be true, constitutes a defense to it." In this instance KMC did not dispute that the subject traffic originated and terminated in different local calling areas (i.e., was "interexchange traffic"), but rather KMC asserted access charges did not apply because the traffic was "enhanced services" traffic, meaning it was exempt from access charges pursuant to FCC regulations.

³ KMC states that Sprint did not rebut its assertions that the traffic was enhanced services traffic. This assertion is false. In its testimony, discovery responses, depositions, and briefs Sprint vigorously disputed KMC's assertion that the traffic was enhanced services traffic, KMC's assertion that VoIP traffic is necessarily enhanced services traffic, and KMC's assertion that VOIP traffic is exempt from access charges. In its Cross-Motion for Reconsideration, *infra*, Sprint addresses certain key points the Commission overlooked or failed to consider in ruling on the sufficiency of some of the evidence Sprint submitted to support these arguments.

Motion at pages 4 and 5). First, KMC confuses industry practice relating to how a carrier treats a customer's traffic for the purposes of providing services under its tariff with the standard in an administrative proceeding for weighing the evidence to resolve disputed issues of material fact. Regardless of whether a carrier might be willing to accept the self-certification of a customer for the purposes of providing service, this practice cannot turn hearsay evidence into direct evidence within the context of a section 120.57 administrative proceeding. Second, KMC failed to produce evidence that self-certification is, in fact, the industry standard. While KMC accepted PointOne's statements regarding the nature of its traffic, and while Sprint agreed that initially it relies on the representations of its customers for determining a customer's eligibility for tariffed services (though not for the purposes of determining the nature of the traffic for intercarrier compensation purposes), KMC provided no independent evidence regarding the comparable practices of other carriers.⁴

The Commission correctly assigned the burden of proof to KMC to provide evidence of its assertion that the interexchange traffic identified by Sprint was enhanced services traffic exempt from access charges. The Commission also correctly decided that KMC failed to meet its burden with the hearsay evidence it provided. While KMC may disagree with the Commission's ruling, it has failed to identify a point of fact or law that the Commission overlooked or failed to consider in rendering its decision. Therefore, KMC's Motion for Reconsideration should be denied.

⁴ KMC cites to *Lockwood v. Baptist Regional Health Services, Inc.*, 541 So. 2d 731 (Fla. 1st DCA 1998) to support its contention that evidence of industry standards is competent evidence of the nature of PointOne's traffic. The cited case does not support KMC's position that hearsay evidence regarding the nature of PointOne's traffic becomes competent, direct evidence if the industry practice is to accept invalidated representations from a customer concerning the nature of its traffic in determining the customer's eligibility for certain services. Not only does the case not support ignoring evidentiary rules relating to hearsay, but in the instant case, KMC did not provide any independent direct evidence that self-certification constitutes the industry standard between a carrier and its customers. See, Order at footnote 26.

2. Jurisdiction of Enhanced Services Traffic

KMC also asks the Commission to reconsider its decision in Issue 4 that the jurisdiction of traffic for intercarrier compensation purposes is determined by the originating and terminating end points of a call. (KMC Motion at pages 6-8) The basis for KMC's request for reconsideration is that the Commission failed to consider the effect of this ruling on the applicability of access charges to "enhanced services" traffic. In fact, the Commission explicitly considered the effect of its ruling on enhanced services traffic, stating:

The jurisdiction and compensation of a call shall be based on its end points, unless otherwise specified in the applicable interconnection agreement. Notwithstanding this decision, enhanced services traffic may be exempt from access charges. (Order at page 18)

The enhanced service exemption does not depend on establishing the local nature of enhanced services traffic. (Order at page 44) Rather, enhanced services traffic is explicitly recognized by the FCC as interstate traffic that would be subject to access charges if the access charge rules were strictly applied. (Order at pages 9 and 44; See, *In the Matter of MTS and WATS Market Structure*, CC Docket No. 78-72, FCC Order No. 83-356) It is because the FCC has determined that enhanced services traffic is jurisdictionally not local traffic that an exemption from access charges is necessary. The Commission correctly applied the facts and the law relating to enhanced services traffic and KMC has failed to identify a point of fact or law which the Commission overlooked or failed to consider in rendering its decision. Therefore, KMC's Motion of Reconsideration should be denied.

B. ISSUE 8 AND 10

KMC also asks the Commission to reconsider its rulings on Issues 8 and 10 as

they relate to the requirement that the parties agree on an independent third party to audit the records necessary to determine the amount of access charges due Sprint from KMC and the amount of reciprocal compensation KMC should refund to Sprint from KMC. (KMC Motion at page 8) Sprint also asks the Commission to reconsider its decision on these issues in its Cross-Motion for Reconsideration, *infra*.

As a result of the Commission's failure to consider key parts of the record and its misinterpretation of the evidence presented, Sprint believes the Commission erred in finding that an audit is necessary to determine the payment due Sprint from KMC. However, in the event the Commission denies Sprint's Cross-Motion for Reconsideration on this point, Sprint concurs that it will be difficult for the parties to agree on a neutral third party to conduct the audit. Unlike KMC, Sprint has spoken with auditing firms that would be willing and are ably staffed to conduct the audit as set forth in the Commission's Order. But, the firms Sprint has spoken with have expressed concerns regarding who would engage the audit firm and, therefore, who would resolve potentially contentious issues regarding the scope and methods involved in performance of the audit. Rather than impose a burden on Commission staff to conduct the audit, Sprint suggests that the Commission (rather than the parties jointly) engage and manage an independent third party to conduct the audit, with the expense shared by the parties as the Commission has ordered. Precedent for this procedure is found in the BellSouth 271 proceedings, where the Commission hired KPMG to conduct an audit of BellSouth's OSS processes, with the audit paid for by BellSouth. See, *In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory*, Docket No. 981834-TP; *In re: Consideration of BellSouth*

Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996, Docket No. 960786-TL; Order No. PSC-99-1568-PAA-TP, issued August 9, 1999.

C. KMC's Motion for Reconsideration does not affect liability

KMC has asked for reconsideration of Issues 4 and 6 and the portions of Issues 8 and 10 requiring an independent third-party audit. But KMC has not sought reconsideration of the Commission's decision in Issue 7, holding that under the terms of the interconnection agreements KMC must pay Sprint's tariffed access charges for the subject traffic. Nor has KMC requested reconsideration of the portions of Issues 8 and 10 holding that KMC must pay Sprint access charges and refund reciprocal compensation payments under the provisions of the interconnection agreements. While in Issue 6 the Commission found that the evidence did not allow it to establish with certainty the nature of the traffic (Order at page 37), in Issues 7 and 8 the Commission determined that such a finding was not necessary for deciding what intercarrier compensation was due under the terms of the interconnection agreements. (Order at pages 39 and 44) Rather, the Commission determined that the evidence clearly established that the traffic at issue was not local traffic as defined in the parties' interconnection agreements and that KMC had improperly terminated this nonlocal traffic over local interconnection trunks in violation of the interconnection agreements. (Order at page 44) In addition, the Commission found that the evidence established that the traffic was subject to Sprint's tariffed access charges under the terms of these agreements. (Order at page 41) KMC has not challenged any of these rulings (and has no valid basis for doing so). Even if the Commission should grant KMC's Motion for Reconsideration in its entirety, it would not

change the Commission's ultimate decision that KMC is liable to Sprint for access charges and reciprocal compensation overpayments.

D. REQUEST FOR TEMPORARY RELIEF

KMC has indicated that the parties will not be able to agree on an independent third party to audit to determine the amount of access charges and reciprocal compensation due Sprint and has asked the Commission to delay the resolution of the case even longer to rule on KMC's Motion for Reconsideration and to resolve the audit issues. (KMC Motion at page 9) KMC argues that additional delay will not harm Sprint since the relief Sprint seeks is only monetary. (KMC Motion at page 9)

Sprint notes that it filed its Complaint on September 24, 2004, and the case has been in progress for approximately 18 months so far. During that time, KMC has transferred the Florida customer base of KMC III to another carrier (See Docket No. 050182-TP) has asked the Commission to cancel KMC III's CLEC certificate (See Docket No. 050641-TL) and has applied to the FCC to discontinue providing services because "it cannot pay its underlying network providers." (See Document No. 10489-05, filed with the Commission in Generic Docket No. 05000-GU). For these reasons, Sprint disagrees that additional delay will not harm its ability to collect the money KMC owes Sprint. Rather, any delay further reduces Sprint's chances of recovering any of the monies KMC owes Sprint. Reconsideration of the Commission's Order on Issues 8 and 10, as requested by Sprint below, will provide Sprint an opportunity to collect the access charges and reciprocal compensation refunds KMC owes Sprint based on a reasonable calculation of the amounts due.

RESPONSE TO KMC'S REQUEST FOR ORAL ARGUMENT

KMC has requested oral argument on its Motion for Reconsideration on the basis that new Commissioners must be assigned to rule on the Motion since two of the original panel members have left. (KMC Request at page 1) In making this request, KMC has ignored the unambiguous provisions of section 350.01(5), F.S., which state that “a petition for reconsideration shall be voted upon by those Commissioners participating in the final disposition of the proceeding.” Since Commissioners Baez and Bradley are no longer with the Commission, Commission Deason is the only Commissioner who is eligible under the statute to rule on KMC’s Motion. The Commission has confirmed the clear meaning of the statute in numerous decisions, including Order No. PSC- 03-0951-FOF-TP in *In re: Investigation into pricing of unbundled network elements (Sprint/Verizon Track)*, issued August 22, 2003 in Docket No. 990649B-TP at page 17.⁵

As Sprint has discussed above, KMC identifies no points of fact or law that were overlooked or that the Commission failed to consider in rendering its decision. The parties have engaged in oral argument, or presented opening statements, before the Commission on numerous occasions as this docket progressed. The parties’ positions are clearly presented in KMC’s Motion and Sprint’s Response. Since the basis for KMC’s Request for Oral Argument is an erroneous interpretation of the governing law, and since additional argument on the issues raised by KMC will add nothing to the pleadings that would assist in the Commission ruling on KMC’s Motion, the Commission should deny KMC’s Request for Oral Argument.

⁵ See, further, the discussion on pages 13-17 of Order No. PSC-03-0951-FOF-TP and the cases cited in the text and related footnotes.

CROSS-MOTION FOR RECONSIDERATION

Sprint has identified evidence that the Commission overlooked or failed to consider which has led to errors in certain factual determinations related to Issues 6, 8 and 10. Therefore, Sprint asks the Commission to reconsider its decision on these issues as set forth below.

A. ISSUE 6

Page 33 of the Order discusses certain deficiencies Commission staff noted in examining Sprint's Exhibit JRB-2 (Hearing Exhibit No. 41). As its ultimate findings of fact, the Order states:

It appears that Sprint's exhibit 41 JRB-2 proves nothing other than the fact that some Sprint customers made toll calls to Sprint customers in other areas. We are concerned with the errors found in the purported SS7 summary. Also, nothing in Sprint's exhibit definitively ties the calls to KMC.

Sprint presented Exhibit JRB-2 as evidence that, at least for these sample calls, the traffic that is the subject of Sprint's Complaint is "nothing more than voice traffic terminated to Sprint Florida POTS subscribers." (Burt Rebuttal at page 18, Tr. at 92) In reaching its conclusion that Exhibit JRB-2 failed to demonstrate this point, the Commission erred in that it overlooked or failed to consider several key facts in the record or evident from Exhibit JRB-2 itself.

First, the Order notes that staff was unsuccessful in its attempt to find corresponding files to the SS7 records reproduced as part of Exhibit JRB-2 in the call detail records provided by Sprint. (Order at page 33) In fact, the corresponding files are contained in the "correlated call records" provided by Sprint in response to KMC's POD No. 15 (Confidential Hearing Exhibit 3). The files are on a confidential CD labeled

“CCRKMC0411904.xls” (referred to hereinafter as “4-19 CCR CD”). Sprint explains the manner of compiling correlated call records (that is, SS7 records on both the originating and terminating end of a call that Sprint is able to collect because it is involved in both ends of the call) and the significance of these correlated records in its sworn responses to Staff’s Interrogatory Nos. 17 and KMC’s Interrogatory No. 11 (Hearing Exhibit No. 2), as well as in the deposition of Sprint’s witness Mr. Schaffer at page 13 (Hearing Exhibit No. 20).

It appears that the 4-19 CCR CD was likely the same evidence that the Order indicates staff examined as the “file labeled with the same date”; we believe this to be the case because of the confusion regarding the April 20th and April 19th dates. Staff apparently was confused by the dates because they didn’t understand the headings of the columns contained in the 4-19 CCR CD. The date shown in the first column, entitled “CDR Date,” reflects the date the data was loaded by Sprint. The second date, in the column labeled “Date/Time,” reflects the date and time of the call. The “Date/Time” column in both the 4-19 CCR CD and the excerpts of these records reflected in Exhibit JRB-2 match the dates and times of the calls on the calling customer bills provided in Exhibit JRB-2.

The Order also notes that “[a] search for the telephone numbers of the sample calls turned up nothing ... [t]hus the sample call on the customer bills could not be tied to the call detail records.” (Order at page 33) However, all of the numbers in the sample bills reflecting the identified April 19th calls (both originating and terminating) are easily found in the records contained on the 4-19 CCR CD, using the “find” function in the Word or Excel Edit mode. The Commission overlooked or failed to consider that the

records matching the records detailed on the SS7 Summary (and reflecting the calling and called party numbers on the customer bills) can be found on the following lines of the 4-19 CCR CD: lines 3451 & 3452, lines 4166 & 4167, lines 6779 & 6780, lines 5643 & 5644, lines 13058 & 13059, and lines 1420 & 1421.

The Order also states that “Nothing in the record could be found that ties the Sprint customer bills to KMC, other than the typed table that Sprint holds out as SS7 records.” (Order at page 33) In making that determination the Commission overlooked or failed to consider that the trunk groups shown on both the SS7 summary (which was included as part of Exhibit JRB-2) and the 4-19 CCR CD from which the summary was derived clearly are trunk groups used by KMC to terminate local traffic to Sprint; this fact was verified by the listing of Sprint/KMC local trunks groups provided by KMC in Response to Sprint’s Interrogatory No. 36(b) (Confidential Hearing Exhibit No. 7). In addition, the charge party numbers identified on the SS7 summary included as part of Exhibit JRB-2 and the matching correlated call records found on the 4-19 CCR CD are clearly the charge party numbers identified by KMC as the charge numbers it assigned to PointOne. (Twine Direct at page 6, Tr. at 191a)

The Order also notes some minor discrepancies between the customer bills and the SS7 summary (and therefore the matching correlated call records on the 4-19 CCR CD from which the SS7 summary was derived), including a difference between the IXC reflected on the correlated call records and the IXC reflected on two of the customer bills. One of the two discrepancies noted by staff is easily explained in that the provider noted on the customer bill is actually a d/b/a of the provider noted on the call records, as reflected on the 4-19 CCR CD in the tabs with the headings “All CICs” and “RC1

ACNAs.” As for the other discrepancy, which shows a different carrier on the bill than on the correlated call records, staff overlooked or failed to consider that this discrepancy merely confirms Sprint’s sworn statement that “there could be any number of scenarios by which carriers pass traffic from one to another that eventually gets terminated to an end user.” (Sprint’s Response to Staff’s Interrogatory No. 12, Hearing Exhibit No. 2)

In addition, staff noted that one call showed a one-hour discrepancy between the time of the call reflected on the customer bill and the time of the call reflected in the SS7 summary (derived from the correlated call records on the 4-19 CCR CD). In determining that this discrepancy undermined the validity of Exhibit JRB-2, the Commission overlooked or failed to consider likely that there was a time zone difference between the calling and called parties, as well as the data collection point. Except for the hour difference, the date and time of the call as reflected on the bill and in the correlated call records, as well as the calling and called party numbers, are identical, which confirms that the correlated call record and the call on the customer bill pertain to the same call.

Exhibit JRB-2 was intended to show that, for at least six of the calls terminated to Sprint by KMC over local interconnection trunks during the time period that is the subject of Sprint’s Complaint, the calls were made by Sprint local POTS customer as long distance calls and billed to those customers as toll calls (as reflected by the calling party bill) and the calls were terminated to Sprint local POTS customers (as reflected by the called party bill). In making the determination that the records provided as part of Exhibit JRB-2 showed “nothing other than the fact that some Sprint customers made toll calls to Sprint customers in other areas,” the Commission overlooked or failed to consider the contrary record evidence as detailed above. In addition, the 4-19 CCR CD and the

correlation to the local trunk groups listed in KMC's discovery response, as well as the identification of the charge party numbers assigned by KMC to PointOne in the charge party number field for these calls, were overlooked in the Commission's finding that "nothing in Sprint's exhibit definitively ties the calls to KMC." Based on these points of record fact that the Commission overlooked or failed to consider, the Commission should reconsider its findings of fact concerning the meaning and sufficiency of Exhibit JRB-2.

B. ISSUE 8 AND 10

The Commission rejected Sprint's calculations of the amount of access charges due Sprint because "Sprint's sampling methodology appears to contain flaws that make it unreliable." (Order at page 49) In reaching this conclusion, the Commission overlooked or failed to consider evidence in the record supporting Sprint's methodology and calculations as a reasonable method for determining the amount due for wrongfully terminated access traffic over an historical period of approximately two years.

First, the Commission overlooked evidence in the record clearly supporting that summary reports of each month's SS7 call detail records (not a sampling) are the basis for the PLU factors used in determining the amount owed. (Aggarwal Rebuttal at pages 4 and 5, Tr. at 116-117; Sprint's Responses, including Supplemental Responses, to KMC's Interrogatory Nos. 15 and 79 (Hearing Exhibit No. 2); Aggarwal Deposition at pages 41 and 42, Hearing Exhibit No. 22) On page 44 of the Order, the Commission misinterprets the affidavit of Dr. Staihr as the basis for its finding that "Sprint collected a sample comprised of call detail records for one day per month for the applicable period to calculate the factors that are applied to adjust minutes from the summary call records." This erroneous conclusion is reiterated on page 45 of the Order. This finding is not

supported by Dr. Staihr's affidavit, which merely describes the mechanism for creating the random sample, but does not address the purposes for which the sample was created.⁶

The purpose of the 27-day random sample is described in Sprint's Response to KMC's POD No. 1 (Hearing Exhibit No. 2) and in Mr. Wiley's Direct Testimony. (Wiley Direct at pages 13 and 14, Tr. at 41-42)⁷ As described by Mr. Wiley, the random sample was developed to support Sprint's findings that KMC delivered interexchange traffic to Sprint over local interconnection trunks with a local number. In addition, as explained in Sprint's Response to KMC's POD No. 1, the random sample was developed to respond to KMC's request for call detail records supporting Sprint's allegations regarding the improper termination of traffic, because it was unduly burdensome and expensive for Sprint to produce all of the millions of call detail records covered by the two year period.⁸ Since the random sample was prepared after the fact, originally in response to KMC's discovery and ultimately as an Exhibit to Mr. Wiley's testimony, it could not have served as the basis for the calculations on which Sprint based its billings to KMC, which were prepared far in advance Sprint's filing its Complaint.

The actual methodology for Sprint's calculations is explained in detail in Sprint's Response to KMC's Interrogatory Nos. 15 and 79 (including the supplemental responses to these Interrogatories), as well as in the Rebuttal Testimony of Sprint's witness Ms. Aggarwal. (Hearing Exhibit No. 2; Aggarwal Rebuttal at pages 4 and 5, Tr. at 116-117)

⁶ While Sprint is not requesting reconsideration on this point, it appears the Commission also overlooked or failed to consider the evidence provided by Sprint in response to Staff's Interrogatory No. 20 and POD No. 3 (Hearing Exhibit No. 2) supporting the statistical methodology used by Dr. Staihr for developing the random sample of one day per month. As noted in the Interrogatory Response, the type of random sampling used to develop the 27-day sample is a recognized methodology called "stratified random sampling" in which the population to be sampled is divided into groups called "strata." KMC produced no evidence refuting Dr. Staihr's affidavit stating that this was in fact a random sampling methodology.

⁷ See, also, Wiley Deposition at pages 104-106 (Hearing Exhibit No. 17).

⁸ The Commission affirmed that the random sample was sufficient to meet Sprint's obligations under the discovery rules in Order No. PSC-05-0650-PCO-TP.

The Commission apparently overlooked this record evidence when it concluded that the 27 days of CDRs were the basis for Sprint's calculation of the billings factors. Rather, as described in Ms. Aggarwal's Rebuttal Testimony and as further detailed in the identified discovery responses, Sprint's calculations were derived from monthly summaries of the call detail records for KMC's traffic over the two-year period. (The summaries are the cumulative total SS7 minutes of use for each month, thus they are the universe of calls, not a sample.) As the Supplemental Response to KMC Interrogatory No. 79 describes, the SS7 monthly summary reports were used to determine the correct jurisdiction of KMC's traffic and a revised PLU factor was developed by dividing the total SS7 minutes by the SS7 minutes by jurisdiction. This factor was then applied to the billed minutes from Sprint's CASS billing system to "true-up" the difference between what KMC was initially billed and what KMC should have been billed based on the correct jurisdiction of the traffic. As stated by Ms. Aggarwal, Sprint engaged Agilent to conduct an independent study to validate Sprint's calculations. (Aggarwal Deposition at pages 60-61, Hearing Exhibit No. 22)

Sprint recognizes that the methodology it used to develop the billing factors is not a perfect methodology. However, as stated by Sprint's witnesses Aggarwal, Wiley and Schaffer, Sprint's approach is a reasonable methodology for determining backbillings of this magnitude and, in fact, is the accepted methodology for Sprint's backbilling of IXC's to correct PIU factors. (Aggarwal Deposition at pages 108-109, Hearing Exhibit No. 22; Wiley Deposition at page 38, Hearing Exhibit No. 17; Schaffer Deposition at page 30, Hearing Exhibit No. 20) The reasonableness of calculating PIU (or PLU) factors based on the actual historical usage from monthly summary reports and the accepted industry use

of these factors for backbillings appear to have been overlooked by Commission in finding that Sprint's methodology was unreliable and that "the amount cannot be determined based on this record." (Order at page 49)

Based on the Commission's failure to consider all of the relevant evidence and its misinterpretation of the purpose of the 27 days of call detail records, as discussed above, the Commission should reconsider its decision on Issue 8 and find that KMC owes Sprint \$3,450,701 for the period from July 2002 through May 2004 (calculated using the monthly totals set forth in Exhibit KJF-3, Hearing Exhibit No. 48).

The calculation of the amount of reciprocal compensation that KMC should refund to Sprint because of its misrepresentation of the amount of local minutes it terminated to Sprint was derived directly from the calculations to determine the amount of access charges due. (Wiley Direct at page 13, Tr. at 41; Danforth Direct at page 7, Tr. at 125) In reaching its decision on Issue 10, the Commission apparently overlooked the relationship of the two calculations. To the extent the Commission grants Sprint's Motion for Reconsideration of Issue 8, it should also reconsider its decision in Issue 10, and find that \$741,396.52, as identified in Exhibit MSD-1 (Hearing Exhibit No. 53) is the proper amount of reciprocal compensation payments to be refunded to Sprint.

CONCLUSION

In its Motion for Reconsideration, KMC has failed to identify any point of fact or law overlooked by the Commission or which the Commission failed to consider. Therefore, KMC's Motion for Reconsideration should be denied. In addition, in its Request for Oral Argument, KMC has relied on an improper construction of the applicable law governing the Commissioners who are eligible to vote on a Motion for

Reconsideration. Therefore, KMC's Request for Oral Argument should be denied.

In its Cross-Motion for Reconsideration, Sprint had identified several points of fact that the Commission over-looked in its conclusions in Issue 6 regarding the evidentiary value of Sprint's Exhibit JRB-2. In addition, Sprint has identified several points of fact that the Commission overlooked or failed to consider in its ruling on Issues 8 and 10 that the appropriate access charges and refund of reciprocal compensation that KMC owes Sprint cannot be determined without an audit. Sprint has met the standard for reconsideration; therefore, its Cross-Motion should be granted and the Commission should reconsider its Order in the manner suggested by Sprint.

Respectfully submitted this 13th day of January 2006.



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