

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of)
)
Petition of KMC Telecom III LLC,)
KMC Telecom V, Inc., and KMC Data LLC)
for Arbitration of an Interconnection) Docket No. 03 1047-TP
Agreement with Sprint Communications,)
LP, and Sprint – Florida, Incorporated,)
Pursuant to Section 252(b) of the)
Communications Act of 1934, as Amended.)

REBUTTAL TESTIMONY OF TIMOTHY J GATES

ON BEHALF OF

**KMC TELECOM III, L.L.C, KMC TELECOM V, INC., AND KMC DATA,
L.L.C.**

July 9,2004

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

1 **Q. PLEASE STATE YOUR NAME , OCCUPATION AND BUSINESS**
2 **ADDRESS.**

3 **A.** My name is Timothy J Gates. My business address is QSI Consulting, 819
4 Huntington Drive, Highlands Ranch, Colorado 80126.

5 **Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION**
6 **WITH THE FIRM?**

7 **A.** QSI Consulting, Inc. (“QSI”) is a consulting firm specializing in traditional and
8 non-traditional utility industries, econometric analysis and computer aided
9 modeling. I currently serve as Senior Vice President.

10 **Q. ARE YOU THE SAME TIMOTHY GATES WHO FILED DIRECT**
11 **TESTIMONY IN THIS PROCEEDING ON BEHALF OF KMC TELECOM**
12 **111, L.L.C., KMC TELECOM V, INC., AND KMC DATA, L.L.C. (“KMC”)?**

13 **A.** Yes.

14 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

15 **A.** The purpose of this rebuttal testimony is to address statements made by certain
16 witnesses for Sprint in their direct testimony filed on June 11, 2004. Specifically
17 I take issue with statements made by Mr. James R. Burt, Mr. Pete Zywenki and
18 Mr. Jimmy R. Davis.

19 **Q. PLEASE ADDRESS THE STATEMENTS WITH WHICH YOU TAKE**
20 **ISSUE MADE BY MR BURT.**

21 **A.** Mr. Burt and I both address Issue 2 (How should the parties identify, exchange
22 and compensate traffic transported in whole or in **part** over internet protocol
23 (“IP”)?), but reach different conclusions. **As** he correctly noted in his testimony:

1 KMC's position is that VoIP traffic passed between the parties
2 should be subject to bill-and-keep until the issue is resolved by the
3 appropriate federal or state regulatory or judicial body. Sprint, on
4 the other hand, believes that VoIP traffic should be treated like all
5 other traffic exchanged between the parties in which the
6 compensation is dependent upon the jurisdiction of the traffic, i.e.,
7 reciprocal compensation rates should apply to local traffic and
8 inter or intrastate access charges should apply to toll traffic.
9 (Direct of **Burt** at 3)

10
11 Mr. Burt further suggests that it is KMC's position that simply passing a call
12 through a packet switch is sufficient to "avoid paying access charges for the
13 origination and termination of the traffic." (Id.) These statements do not
14 accurately capture KMC's position or the industry treatment of VoIP traffic.
15 VoIP traffic, **and** other IP-enabled traffic, that meets the industry test for
16 information services should not be subject to access charges. And, in any event,
17 the Commission should defer this issue until the Federal Communications
18 Commission's Intercarrier Compensation (*Developing a Unified Intercarrier*
19 *Compensation Regime*, CC Docket No. 01-92) and *IP-Enabled Services (IP-*
20 *Enabled Services*, WC Docket No. 04-36, FCC 04-28) rulemakings are resolved.

21 **Q. PLEASE EXPLAIN.**

22 **A.** Mr. Burt addresses the three general types of VoIP calls but ignores the industry's
23 treatment of these types of calls. Mr. Burt also recognizes that this Commission
24 has chosen not to decide on the type of intercarrier compensation that would
25 apply to VoIP traffic, deferring the issue to the FCC's pending proceedings, but
26 encourages the Commission to act contrary to those previous rulings.

27 **Q. HOW SHOULD VOIP CALLS BE TREATED?**

1 **A.** Simplistically speaking the three types of VoIP calls include “phone to phone”,
2 “phone to computer” and “computer to computer.” Phone to phone
3 communications would have typical phones at each end **of** the session. The voice
4 is analog **at** both the originating and terminating ends, but at some point in the
5 transport of the call, IP technology is used to carry the traffic instead of TDM
6 technology. The IP technology might also be (**and** increasingly is) used for other
7 capabilities such as simultaneous access to voice mail, e-mail, fax, and video mail
8 during what appears to be **a** traditional TDM call. The second type of VoIP call,
9 phone to computer or computer to phone, would have the call either terminating
10 or originating in IP format. The third type, computer to computer, would both
11 originate and terminate in IP format. In these latter cases, the obvious
12 distinguishing feature is a net protocol conversion or avoidance of the public
13 switched network altogether. Generally speaking, one might be inclined to
14 consider that phone to phone calls would be treated **as** telecommunications
15 service, while the other two types would be considered information services
16 because of net protocol conversion. The FCC has recognized, however, that such
17 a simple explanation and result are not sufficient.

18 **Q. PLEASE DESCRIBE THE FCC’S STATEMENTS ON THESE TYPES OF**
19 **CALLS.**

20 **A.** As the FCC has noted in considering whether such services fall within the
21 definition of “telecommunications service” under the Telecommunications Act of
22 1996 (“Telecom Act” or “**Act**”), it would be overreaching to conclude that all
23 VoIP services are telecommunications services. (*Federal-State Joint Board on*

1 *Universal Service*, Report to Congress, 13 FCC Rcd. 11501(1998) (“**Report to**
2 **Congress**”). Instead, after considering the language of the Act and the likelihood
3 for advances in the area of IP-enabled communications, the FCC concluded that,
4 at most, certain forms of “phone-to-phone IP telephony” *might* fall within the
5 definition of “telecommunications services” under the **Act**. The FCC then stated
6 its reluctance to categorize even phone-to-phone IP telephony as a
7 telecommunications service:

8 We do not believe, however, it is appropriate to make any
9 definitive pronouncements in the absence of a more complete
10 record focused on individual service offerings. . . . Because of the
11 wide range of services that can be provided using packetized voice
12 **and** innovative [customer premise equipment], we will need . . . to
13 consider whether our tentative definition of phone-to-phone IP
14 telephony accurately distinguishes between phone-to-phone and
15 other forms of IP telephony, and is not likely to be quickly
16 overcome by changes in technology. (Id. at 90)

17
18 Accordingly, the FCC itself has observed that there is no single, comprehensive
19 answer. Some IP-based services may provide no interaction with stored data or
20 other enhanced functionality, nor do those services involve a net protocol
21 conversion as a component of the service. In those cases, it may be reasonable to
22 conclude that the services are not “information” in nature, but are simply
23 telecommunications services of a different form. But in many other cases, the
24 service may involve a net protocol conversion or other enhanced functionality that
25 renders the service something more than telecommunications – **an** information
26 service.

27 **Q. HAS THE FCC MADE SOME INTERIM DECISIONS ON VOIP**
28 **RELATED SERVICES RECENTLY?**

1 **A.** Yes. The FCC recently decided that pulver.com’s Free World Dialup is **an**
2 unregulated information service. (*Petition for Declaratoy Ruling that*
3 *pulver.com’s Free World Dialup is Neither Telecommunications Nor a*
4 *Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and
5 Order, FCC 04-27, (Feb. 19, 2004)). In response to a petition by AT&T,
6 however, the facts **and** findings were different. In that proceeding, the FCC found
7 that on an interim basis, AT&T’s specific service should be treated **as** a
8 telecommunications service as defined by the Act. (*Petition for Declaratory*
9 *Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from*
10 *Access Charges*, WC Docket No. 02-361, Order, FCC 04-97, (April 21, 2004)
11 (*“FCC AT&T Order”*)). Nevertheless, the FCC stated repeatedly in these
12 decisions that many if not most of the issues are to be addressed more thoroughly
13 in the *IP-Enabled Services* NPRM. **So** while these recent rulings provide useful
14 information for framing issues, they do not provide any meaningful precedent for
15 this Commission’s treatment of VoIP in Florida about the outcome of the more
16 thorough treatment from the FCC in the rulemaking. Indeed, to cite one example,
17 the FCC has specifically stated that it **may** adopt a fundamentally different
18 approach with respect to the AT&T specific service at issue in the *FCC AT&T*
19 *Order* when it resolves the *IP-Enabled Services* NPRM. (Id. at 10)

20 **Q. IS KMC’S POSITION ON THE TREATMENT OF VOIP CONSISTENT**
21 **WITH THE FCC’S APPROACH?**

22 **A.** Yes. The FCC has said on several occasions that it would not make a definitive
23 pronouncement **as** to the regulatory status of IP telephony absent a more complete

1 record from the IP-Enabled Services NPRM. (See, for instance, FCC *AT&T*
2 *Order* at paragraph 8) KMC recommends that the Commission maintain the
3 same conservative approach as the FCC until the FCC completes the *IP Enabled*
4 *Services* NPRM.

5 **Q. DOES SPRINT SUGGEST APPLYING THE FCC RULES FOR**
6 **DETERMINING THE APPROPRIATE REGULATORY TREATMENT OF**
7 **IP-ENABLED SERVICES?**

8 **A.** No. Sprint neither cites to nor relies upon the FCC rules (47 CFR 64.702(a)) or
9 the Act to determine the appropriate treatment of IP enabled services. Instead,
10 Sprint simply argues that because it is possible to make the equivalent of toll calls
11 with VoIP or other IP-enabled technologies that access charges should apply.
12 (Burt at 5) This broad brush approach is self-serving and not in the public
13 interest. The Act makes clear that **any** service that has the capability for
14 generating, acquiring, storing, transforming, processing, retrieving, utilizing, or
15 making available information via telecommunications, and includes electronic
16 publishing, but does not include any use of any such capability for the
17 management, control or operation of a telecommunications system or the
18 management of a telecommunications service, is an information service. (Section
19 153(20))

20 **Q. IS IT PRACTICAL TO APPLY THE FCC RULES IN A BROAD BRUSH**
21 **APPROACH?**

22 **A.** No. It is critical that the Commission recognize that simplistic categorization of
23 VoIP services (*e.g.* computer-to-computer or phone-to-phone) are becoming

1 increasingly difficult to sustain as technology progresses. VoIP services that
2 include, for example, real-time voice and information processing, retrieval of
3 stored information or the conversion from analog voice over TDM to IP format all
4 meet the statutory **and** regulatory definition of “Information Service.” The fact
5 that **an** IP-enabled service originates **and** terminates as a voice transmission does
6 not negate the fact that there may be rule 64.702(a) capabilities (*e.g.*, information
7 generation, storage, processing, or retrieval) associated with that “voice”
8 transmission. Further, VoIP services can be offered to customers as **an** in
9 extractible bundled package of services that include voice among the enhanced or
10 information services that are available on every call. The practical reality is that
11 local exchange carriers such as KMC **and** Sprint may simply be unable to tell the
12 difference among the various types of VoIP traffic, or when various applications
13 are being used in **a** call. The important point is that the technology and the
14 services associated with IP-enabled technology are evolving. An attempt to
15 classify an IP-enabled voice communication just like all other circuit-switched
16 voice transmissions will stifle the development of these services.

17 **Q. MR. BURT SUPPORTS SPRINT’S POSITION ON VOIP TREATMENT**
18 **WITH A SUGGESTION THAT “THE INTENT OF BOTH FORMS OF**
19 **TECHNOLOGY IS THE SAME.” (BURT AT 6) IS THAT A**
20 **PERSUASIVE ARGUMENT?**

21 **A.** No. While it’s not entirely clear what Mr. Burt is suggesting when he refers to the
22 intent of technology, it is clear that such a distinction, to the extent it can be made,
23 is not utilized by the Act or the FCC rules in distinguishing between

1 telecommunication service and information service. The conclusion Mr. **Burt**
2 draws from this strained analogy is also inconsistent with the Florida legislature's
3 mandate regarding VoIP:

4 The Legislature finds that the provision of voice-over-internet
5 protocol (VOIP) free of unnecessary regulation, regardless of the
6 provider, is in the public interest.⁷

8 **Q. MR. BURT SUGGESTS AT PAGE 7 OF HIS TESTIMONY THAT**
9 **INTRASTATE AND INTERSTATE ACCESS CHARGES SHOULD BE**
10 **PAID ON VOIP CALLS. PLEASE COMMENT.**

11 **A.** First of all, it is not at all clear that **Sprint** or KMC could identify VoIP calls from
12 other calls. KMC does not at this time offer VoIP services to its end users in
13 Florida, **and** so would have no **reason** in any event to have the capability to
14 identify and track such traffic. Moreover, Mr. Burt's suggestion to use the "end
15 points" of a call to define the jurisdictional intercarrier compensation for calls is
16 flawed and unworkable. The **D.C.** Circuit remanded the earlier *Declaratory*
17 *Ruling* because it found the FCC's end-to-end analysis poorly reasoned. (*Bell*
18 *Atlantic v. FCC*, 206 F.3d at 7) (Implementation of the Local Competition
19 Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for
20 ISP-bound Traffic, CC Docket Nos. 96-98 and 99-68, Declaratory Ruling **and**
21 Notice of Proposed Rulemaking, 14 F.C.C.R. 3689 (1999) (*Declaratory Ruling*).
22 Finally, applying subsidy-laden access charges to this new technology would be
23 inconsistent and harmful.

24 **Q. PLEASE EXPLAIN.**

¹ Subsection 364.01(3).

1 **A.** The access charge system was put in place after divestiture to compensate, at least
2 in **part**, for the ILECs' loss of toll revenues. Today, however, with the RBOCs
3 having received full interLATA authority, it makes little sense to continue the
4 application of above-cost access **charges**. To do so would be inconsistent with the
5 mandate to encourage the development of competition. The FCC and many states
6 are working hard to move access charges to cost by removing implicit subsidies.

7 **Q. MR. BURT SUGGESTS THAT THERE ARE SIGNIFICANT ACCESS**
8 **REVENUES AT RISK FOR SPRINT IF THIS ISSUE IS NOT DECIDED.**
9 **(BURT AT 12) IS THAT KEY TO THE COMMISSION'S DECISION ON**
10 **THIS ISSUE?**

11 **A.** No. Sprint should not be protected from changing technology **and** it has no
12 inalienable right to any revenue stream, let alone **a** specific revenue stream from
13 access charges. Further, Mr. Burt's suggestion is inconsistent with Sprint's most
14 recent financial reports. In its first quarter results summary, Sprint reported:

15 In addition *to* strong DSL growth, the local division continues to
16 increase penetration of strategic products and service offerings.
17 During the quarter, switched access minutes of use **and** consumer
18 long distance minutes increased on **a** year-over-year basis.
19 ("Sprint Reports First Quarter Results" released **April 20, 2004;**
20 **page 4 of 7**)
21

22 Clearly Sprint is not suffering from reductions in access minutes today. Further,
23 based on estimates of VoIP volumes provided in my direct testimony, it is not
24 likely **that** VoIP will supplant any significant amount of traditional traffic in the
25 foreseeable future.

26 **Q. THE QUOTE ABOVE CITES STRONG DSL GROWTH FOR SPRINT.**
27 **DOES THAT GROWTH OFFSET OTHER LOSSES?**

1 **A.** Well, I would not refer to changes in revenue levels as losses since Sprint has a
2 strong set of financials. Nevertheless, Sprint's growth in DSL revenues of **12.7**
3 percent, shows that Sprint is succeeding in new markets. (Id.) Sprint's attempt to
4 maintain or increase revenues for a particular service while it proceeds to expand
5 into other service lines that in **part** may compete with each other for consumer
6 dollars is self-serving **and** completely inappropriate for **a** price-cap regulated
7 carrier. The fact that ILECs **have** historically enjoyed an access charge revenue
8 stream does not mean that they are entitled to receive those revenues in
9 perpetuity.

10 **Q. MR. BURT REFERS TO ORDERS BY THE MINNESOTA AND NEW**
11 **YORK PUBLIC SERVICE COMMISSIONS THAT WOULD HAVE**
12 **TREATED VOIP PROVIDERS AS TELECOMMUNICATIONS**
13 **COMPANIES. (BURT AT 17) IS HIS RELIANCE ON THESE ORDERS**
14 **MISPLACED?**

15 **A.** Yes. Mr. Burt acknowledged that the Minnesota order **was** overturned, which I
16 also described in my direct testimony. The New York order in Case 03-C-1285
17 **was** also overturned. On June 30, 2004, Magistrate Judge Douglas F. Eaton of the
18 United States District Court for the Southern District of New York stated his
19 intent to stay the New York order. Although I am not a lawyer, the general
20 consensus in the industry seems to be that the courts are supporting the FCC's
21 hands-off approach to the regulation of VoIP and other IP-enabled services. Or,
22 more specifically, these rulings show a trend towards deferring these issues to the
23 FCC's jurisdiction. Given the diversity of rulings and the lack of certainty

1 regarding the **law**, it would be unwise to rely upon one or several rulings.
2 Instead, the Commission should make the resolution of this issue dependant upon
3 the outcome of the FCC's pending *Intercarrier Compensation* and *IP-Enabled*
4 *Services* rulemakings.

5 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION**
6 **REGARDING ISSUE 2?**

7 **A.** The Commission should reject Sprint's attempt to impose **an** outdated and
8 inappropriate compensation regime (access charges) on IP-enabled services,
9 including VoIP. Sprint's position is **an** obvious attempt to maintain revenues in
10 the face of changing technology **and** nascent competition. Sprint is attempting to
11 maintain its sinecure of unwarranted access revenue as a **prop** as it migrates itself
12 to the IP platforms – the end result being a continuation of its predominant market
13 position and the lack of competition. Instead of artificially ham stringing this new
14 and promising technology, the Commission should maintain the status quo by
15 following its own precedent from prior proceedings **and** defer addressing the
16 treatment of VoIP traffic until the FCC issues an Order in its *IP-Enabled Services*
17 *NPRM* later this year **and** the FCC's *Intercarrier Compensation* proceeding. Bill
18 **and keep** should apply to VoIP calls, to the extent they **can** be identified, until the
19 proper regulatory classification and treatment of VoIP is determined. Any change
20 in the current "hands-off" approach by this Commission should follow the FCC's
21 in depth review of IP-based communications and related intercarrier
22 compensation matters in pending rulemakings.

1 **Q. YOU AND MR. DAVIS BOTH DISCUSS ISSUE 13 IN YOUR DIRECT**
2 **TESTIMONIES. IS IT YOUR UNDERSTANDING THAT THIS ISSUE IS**
3 **CLOSED?**

4 **A.** Yes. **Mr.** Davis and I both address Issue 13 (Issue 13 -- What are the appropriate
5 **rates, terms and conditions for the performance of routine network modifications**
6 **by Sprint?). I understand that KMC and Sprint have resolved this issue.**

7 **Q. PLEASE DISCUSS THE DISAGREEMENT YOU HAVE WITH THE**
8 **POSITIONS TAKE BY SPRINT WITNESS MR. SYWENKI.**

9 **A.** Mr. Sywenki **and** I address issues 14 and 15. Issue 15 deals with the requirements
10 for interconnection and compensation for the transport of Sprint end user
11 originated ISP-bound traffic between Sprint's originating local calling area **and a**
12 **POI outside Sprint's local calling area. Sprint's position – forcing KMC to pay**
13 **for facilities on the Sprint side of the POI – would eviscerate the benefits of the**
14 **single POI per LATA rule. Issue 14 deals with the conditions under which Sprint**
15 **may establish its own transport facilities for the delivery of Sprint-originated**
16 **traffic at points on the KMC network other than the KMC identified POI. This is**
17 **simply another attempt by Sprint to avoid the single POI per LATA rule that**
18 **KMC seeks to have incorporated into the Parties' agreement and to which Sprint,**
19 **ostensibly, has agreed.**

20 **Q. PLEASE ADDRESS THE DISPUTE ON ISSUE 15.**

21 **A. Sprint** wants the ability to charge KMC for the cost of transporting its customer's
22 traffic to the KMC POI. (Sywenki at 3) KMC maintains, Pursuant to the FCC's

1 rules and this Commission’s prior rulings, that each carrier is responsible for
2 facilities and costs on its side of the POI.

3 **Q. DOES THE TYPE OF TRAFFIC BEING DELIVERED TO THE POI**
4 **CHANGE SPRINT’S OBLIGATIONS WITH RESPECT TO**
5 **INTERCONNECTION?**

6 **A.** No. Mr. Sywenki states that “...it is Sprint’s assumption that the Sprint-
7 originated minutes are likely to be all ISP-bound traffic.” (Sywenki at 4)
8 Regardless of the type of traffic Sprint’s customers originate, the rates that Sprint
9 charges those customers compensate Sprint for delivering the traffic to the POI.
10 The FCC – in its *ISP Remand Order* – did carve out the authority to set
11 intercarrier compensation rates for ISP-bound traffic, under one particular
12 subsection of Section 251. But the FCC was crystal clear in stating that it was *not*
13 changing the scope of how ISP-bound traffic is exchanged between carriers under
14 the other subsections of Section 251, or to limit the state commissions’
15 jurisdiction beyond the issue of setting intercarrier compensation rates.
16 Specifically, the FCC emphasized in footnote 149 of its *ISP Remand Order* that
17 its establishment of the interim regime “affects only the intercarrier *compensation*
18 (*i.e.*, the rates) applicable to the delivery of ISP-bound traffic. It does not alter
19 carriers’ other obligations under our Part 51 rules, 47 C.F.R. Part 51, or existing
20 interconnection agreements, such as obligations to transport traffic to points of
21 interconnection.” (emphasis in original) Thus, the *ISP Remand Order* does not
22 relieve Sprint of its obligations under rule 703(b).

1 **Q. YOU STATED ABOVE THAT THE RATES SPRINT CUSTOMERS PAY**
2 **COMPENSATES SPRINT FOR HANDLING THE TRAFFIC. PLEASE**
3 **EXPLAIN.**

4 **A.** The FCC's *TSR Order* is directly on point. The language in this order is very
5 straightforward. The pertinent language with respect to ILEC compensation is as
6 follows:

7 According to Defendants, the *Local Competition Order's*
8 regulatory regime, which requires carriers to **pay** for facilities used
9 to deliver their originating traffic to their co-carriers, represents a
10 physical occupation of Defendants property without just
11 compensation, in violation of the Takings Clause of the
12 Constitution. We disagree. *The Local Competition Order requires*
13 *a carrier to pay the cost of facilities used to deliver traffic*
14 *originated by that carrier to the network of its co-carrier, who then*
15 *terminates that traffic and bills the originating carrier for*
16 *termination compensation.* In essence, the originating carrier holds
17 itself out **as** being capable of transmitting a telephone call to **my**
18 end user, and is responsible for paying the cost of delivering the
19 call to the network of the co-carrier who will then terminate the
20 call. Under the Commission's regulations, the cost of the facilities
21 used to deliver this traffic is the originating carrier's responsibility,
22 because these facilities are **part** of the originating carrier's network.
23 *The originating carrier recovers the costs of these facilities*
24 *through the rates it charges its own customers for making calls.*
25 This regime represents "rules of the road" under which all carriers
26 operate, and which make it possible for one company's customer
27 to call **any** other customer even if that customer is served by
28 another telephone company.

29
30 In the Matters of TSR WIRELESS, LLC, et al, Complainants, v. US WEST
31 COMMUNICATIONS, INC. et al, Defendants; **MEMORANDUM OPINION**
32 **AND ORDER**; File Nos. E-98-13, E-98-15, E-98-16, **E-98-17**, E-98-18;
33 Released June 21,2000; ¶34; (*TSR Order*) (emphasis added) (footnotes omitted).

34
35 By this reasoning, KMC should not have to pay Sprint for Sprint-originated traffic
36 dialed by **Sprint's** paying local exchange customers that **is** delivered to the POI.

1 Stated differently, KMC should not have to subsidize Sprint's holding itself out to
2 its end users **as** being capable of transmitting a locally dialed call to **any** end user.

3 **Q. THIS QUOTE SAYS THAT ILECS WOULD RECOVER THEIR COSTS**
4 **THROUGH THE RATES THEY CHARGE THEIR OWN CUSTOMERS.**
5 **DO LOCAL RATES COVER THE COST OF CARRYING THIS TRAFFIC**
6 **TO THE POI OR DESIGNATED TRANSIT POINT?**

7 A. Yes, The **FCC has** stated that ILEC rates cover these costs. This does not refer
8 just to Sprint's basic local rates. Local rates **and** revenues include not only the
9 basic local **rate**, but other revenues from subscriber line charges, vertical services
10 (i.e., call waiting, call forwarding, anonymous call rejection and other star code
11 features), universal service surcharges, extended area service charges and the
12 subsidies remaining in Sprint's access charges for intraLATA and interLATA toll.

13 **Q. MR SYWENKI STATES THAT "...WHERE THE TRAFFIC IS HIGHLY**
14 **UNBALANCED, SUCH AS ISP-BOUND TRAFFIC, THE COST OF**
15 **INTERCONNECTION IS BORNE PRIMARILY, IF NOT ENTIRELY, BY**
16 **THE ORIGINATING CARRIER"** (SYWENKI AT 4). **PLEASE**
17 **RESPOND.**

18 A. First of all, if Sprint's customers **are** originating calls to KMC customers, it is
19 obviously **Sprint's** obligation – and not KMC's – to get that traffic to the POI for
20 termination. Second, Mr. Sywenki is simply wrong to suggest that the costs of
21 interconnection are borne **primarily** by **Sprint**. To the contrary, regardless of the
22 amount of traffic exchanged, **an** interconnection point must be established and
23 there are fixed costs associated with those facilities for the terminating carrier **as**

1 well. Even if all the traffic originates with Sprint customers, KMC is obligated to
2 match the capacity on its side of the POI to prevent blocking. In other words,
3 KMC must match the facilities on its side of the POI to terminate the traffic
4 originated by **Sprint's** customers.

5 **Q. IS MR SYWENKI CORRECT TO SUGGEST THAT "...KMC HAS NO**
6 **INCENTIVE TO DEPLOY MORE THAN ONE POI PER LATA BECAUSE**
7 **THERE IS NO EQUITABLE DISTRIBUTION OF TRANSPORT**
8 **COSTS.?" (SYWENKI AT 4)**

9 **A.** No. The costs of transport are equitable. If there is only one POI per **LATA**
10 Sprint must bring its traffic from throughout the **LATA** to the POI. For
11 termination, however, the same is true. With a single POI, KMC must terminate
12 the traffic from the POI to the terminating location wherever that might be. To
13 suggest that the distribution of transport costs is not equitable because Sprint
14 customers choose to call KMC customers, or because the traffic is not in perfect
15 balance is simply a red herring. Whatever the traffic characteristics may be, the
16 **facilities on both** sides of the POI must be sufficient to carry that traffic.

17 **Q. PLEASE ADDRESS MR. SYWENKI'S SUGGESTION THAT KMC HAS**
18 **NO INCENTIVE TO DEPLOY MORE THAN ONE POI.**

19 **A.** KMC has incentives to deploy additional POIs when and if the traffic dictates
20 such deployment. Indeed, if that were not true, then KMC would have only one
21 **POI per LATA** wherever it operates. Instead, KMC recognizes, that additional
22 POIs may be desirable to employ under certain circumstances. At the same time,
23 some POIs may be eliminated as KMC grooms its network, for efficiency or other

1 operational reasons. Mr. Collins addresses engineering issues that might impact
2 POI deployment in his testimony, but it is appropriate for me to address this issue
3 from an economic perspective as **well**.

4 The **primary** reason the FCC and the states have maintained the single POI
5 per **LATA** rule is to prevent ILECs from forcing new entrants to duplicate their
6 networks. Such duplication would be uneconomic and serve as a barrier to entry.
7 There have been several orders supporting the single POI **per LATA** rule. For
8 instance, in the FCC's Order in the Kansas/Oklahoma **271** proceeding it found as
9 follows:

10 **235.** Finally, we caution SWBT from taking what appears to be an
11 expansive and out of context interpretation of findings we made in
12 **our SWBT Texas Order** concerning its obligation to deliver traffic
13 to a competitive LEC's point of interconnection. n695 In our *SWBT*
14 *Texas Order*, we cited to SWBT's interconnection agreement with
15 MCI-WorldCom to **support** the proposition that SWBT provided
16 carriers the option of a single point **of** interconnection. n696 We
17 did not, however, consider the issue of how that choice **of**
18 interconnection would affect inter-carrier compensation
19 arrangements. Nor did our decision to allow a single point of
20 interconnection change **an** incumbent LEC's reciprocal
21 compensation obligations under our current rules. n697 For
22 example, these rules preclude **an** incumbent LEC from charging
23 carriers for local traffic that originates on the incumbent LEC's
24 network. n698 These rules also require that **an** incumbent LEC
25 compensate the other carrier for transport n699 and termination
26 n700 for **local** traffic that originates on the network facilities of
27 such other carrier. n701

28
29 *In the Mutter & Joint Application by SBC Communications Inc.,*
30 *Southwestern Bell Telephone Company, and Southwestern Bell*
31 *Communications Services, Inc. d/b/a Southwestern Bell Long*
32 *Distance for Provision & In-Region, InterLATA Services in Kansas*
33 *and Oklahoma*, CC Docket No. 00-217, FEDERAL
34 COMMUNICATIONS COMMISSION, 16 FCC Rcd 6237; 2001
35 FCC LEXIS 1202; **23** Comm. Reg. (P & F) **299**, **RELEASE-**
36 **NUMBER:** FCC 01-29, January **22**, 2001 Released; * Adopted
37 January 19, 2001. (footnotes omitted)
38

1 It is clear from this **and** other rulings, that the originating carrier **may** not **charge** a
2 terminating carrier for the cost of transport, or for the facilities used to transport
3 that traffic to **the** POI. By extension, it is clear **that** simply because a POI might
4 be outside a local calling area, Sprint has no right to charge KMC for the cost of
5 transport, or for the facilities used to transport the traffic **from** the local calling
6 area to the POI.

7 **Q. SPRINT ARGUES, BASED ON THE *ISP-REMAND ORDER*, THAT ISP-**
8 **BOUND TRAFFIC IS NOT “LOCAL” TRAFFIC AND IS THEREFORE**
9 **NOT PERTINENT TO RULE 51.703(b). (SYWENKI AT 5) PLEASE**
10 **COMMENT.**

11 **A.** Why I **am** not a lawyer, it is clear that Sprint is ignoring a key point made in the
12 *ISP-Remand Order*. As I noted above **at** the beginning **of** the discussion of Issue
13 15, the FCC emphasized in footnote 149 of its *ISP Remand Order* that its
14 establishment of the interim intercarrier compensation regime for ISP-bound
15 traffic did not impact the ILEC interconnection responsibilities. Specifically
16 footnote 149 states

17 This interim regime **affects** only the intercarrier *compensation* (*i.e.*,
18 the rates) applicable to the delivery of ISP-bound traffic. It does
19 not alter carriers’ other obligations under our **Part** 51 rules, 47
20 C.F.R. **Part** 51, or existing interconnection agreements, such as
21 obligations to transport traffic to points of interconnection.”
22 (emphasis in original)

23
24 If ISP-bound traffic were not subject to these interconnection obligations, there
25 would have **been** no sense in the FCC reiterating those obligations. Thus, the *ISP*
26 *Remand Order* does not relieve Sprint of its obligations under rule 703(b) and it
27 may not assess charges on KMC for traffic that originates on Sprint’s network.

1 **Q. PLEASE SUMMARIZE YOUR POSITION ON ISSUE 15.**

2 **A.** Sprint should pay the cost of transporting Sprint-originated calls to the designated
3 POI. KMC should **pay** all transport costs on its side of the POI.

4 **Q. PLEASE ADDRESS THE DISPUTE ON ISSUE 14.**

5 **A.** Sprint is seeking authority to deliver its traffic to points other than the POI
6 identified **by** KMC. KMC maintains that this is just one more attempt to force
7 KMC to establish multiple POIs.

8 **Q. MR. SYWENKI STATES THAT “...IT MAY MAKE ECONOMIC AND**
9 **TECHNICAL SENSE FOR SPRINT TO HAVE THE OPTION TO SELF-**
10 **PROVISION TRANSPORT TO A LOCATION ON KMC’S NETWORK.”**
11 **(SYWENKI AT 10) PLEASE COMMENT.**

12 **A.** Mr. Sywenki fails to recognize that what may be economic for Sprint, would not
13 necessarily be economic for KMC, nor consistent with the pro-competitive
14 purposes of the Act. Indeed, the purpose of the single POI per **LATA** rule is to
15 prevent ILECs from imposing additional and uneconomic costs on new
16 competitors. Nevertheless, KMC, **as** it implements its interconnection
17 agreements, is willing to discuss the potential for additional POIs should traffic
18 dictate the additional investment. KMC is simply **asking** the Commission to not
19 make the establishment of additional POIs **an** obligation.

20 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

21 **A.** Yes, it does.