

1 **BEFORE THE PUBLIC SERVICE COMMISSION**

2 **SPRINT-FLORIDA, INCORPORATED**

3 **REBUTTAL TESTIMONY OF**

4 **DR. BRIAN K. STAIHR**

5

6 **Q. Please state your name, title, and business address.**

7 A. My name is Brian K. Staihr. I am employed by Sprint Corporation as Senior
8 Regulatory Economist in Sprint's Department of Law and External Affairs. My
9 business address is 6450 Sprint Parkway, Overland Park, Kansas 66251.

10

11 **Q. Are you the same Brian K. Staihr who filed direct testimony in this proceeding**
12 **on June 11, 2004?**

13 A. Yes I am.

14

15 **Q. What is the purpose of your rebuttal testimony in this proceeding?**

16 A. In my rebuttal testimony I respond to points raised in the direct testimony of Mr.
17 Robert E. Collins Jr. filed June 11, 2004, on behalf of KMC Telecom III LLC,
18 KMC Telecom V, Inc., and KMC Data, LLC. Specifically, I address Mr. Collins'
19 discussion of security deposits.

20

21 **Q. What is KMC's position regarding security deposits.**

22 A. In his testimony Mr. Collins suggests that security deposits should be reciprocal
23 (Collins Direct page 6). He goes on to accuse Sprint of maintaining a position that
24 is "manifestly discriminatory" (Collins Direct page 6).

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1 **Q. Does Mr. Collins provide any data, economic rationale, or argument as to why**
2 **he believes security deposits should be reciprocal?**

3 A. No. The justification for his position appears to be: *If KMC has to pay then Sprint*
4 *should have to pay.* At no point does he provide a reasoned argument or
5 explanation as to whether the need for a security deposit is the same for KMC as it
6 is for Sprint.

7

8 **Q. Does Mr. Collins provide any data, economic rationale, or argument to**
9 **support his accusation that Sprint's position is "manifestly discriminatory"?**

10 A. No.

11

12 **Q. Is Sprint's position "manifestly discriminatory" as Mr. Collins claims?**

13 A. Absolutely not. While I agree that it could be considered discriminatory if Sprint
14 was to require a security deposit from KMC but not from other CLECs, as
15 discussed in my direct testimony that is simply not the case: Sprint requires a
16 security deposit from *every* CLEC it interconnects with. *In fact, Sprint has gone so*
17 *far as to require a security deposit from its own wireless operations, Sprint PCS.*
18 Mr. Collins has no basis for calling Sprint's position discriminatory.

19

20 **Q. Is it possible that Mr. Collins believes Sprint's position is discriminatory**
21 **because—in his words--Sprint assumes the CLEC is "not entitled to any**
22 **assurance of future payment" (Collins Direct page 6)?**

23 A. If that is the basis for Mr. Collins' accusation then not only is it inaccurate, but it
24 demonstrates a fundamental misunderstanding regarding the purpose of security

1 deposits. A security deposit does not provide assurance of future payment, and the
2 issue at hand has nothing to do with either party being *entitled* to assurance
3 regarding future payments. The issue is whether each party *faces uncertainty*
4 regarding future payments, and therefore *incurs risk* regarding future payments.
5 And, based upon real-world experience, it is Sprint that faces significant uncertainty
6 in this case, not KMC.

7
8 **Q. Please explain your statement that real-world experience demonstrates that it**
9 **is Sprint, and not KMC, that is facing significant uncertainty regarding future**
10 **payments in this case?**

11 A. In my direct testimony I explained that, as an incumbent local exchange carrier and
12 carrier of last resort, Sprint does not have the option of simply ceasing operations
13 and/or exiting the market. KMC does. Since the passage of the Telecom Act the
14 CLEC industry has been saturated with companies pursuing flawed business plans
15 that were forced to restructure, declare bankruptcy, exit markets, cease operations,
16 or any combination thereof. Consider just some of CLECs with whom Sprint has
17 entered into interconnection agreements, or to whom it has provided services, that
18 subsequently either ceased operations, declared bankruptcy, or both, leaving Sprint
19 to write off unpaid balances that were, in many cases, significant: (1) Cable &
20 Wireless USA; (2) Data Telecom; (3) Galaxy American Communications, LLC; (4)
21 Global Systems, Inc.; (5) Internet Services of Michigan, Inc.; (6) NOW
22 Communications; (7) Onestar Long Distance; (8) RCN Corp; (9) Arrow
23 Communications; (10) Comm South; (11) Delta Phone; (12) DynaTel; (13) EZTalk;
24 (14) In Touch Communications; (15) Koyote Telephone; (16) MaxTel; (17) MCI;

1 (18) NTelos; (19) One Source; (20) Rebound Enterprises; (21) TelWest; (22) USA
2 Quick Phone. In addition, CLECs such as Adelphia, ITC^DeltaCom, and Supra
3 have survived (or are currently in) Chapter 11 and have unpaid balances with
4 Sprint. No doubt each of these CLECs, at some point in time, professed to pose no
5 risk to Sprint (or any ILEC) regarding future payments. But experience has shown
6 that such claims simply cannot be accepted at face value, and the costs to Sprint—
7 measured in millions of dollars that will not be recovered—are very real.
8 Furthermore, KMC's own CEO has been quoted as saying he expects this trend to
9 continue. KMC CEO William F. Lenahan was interviewed in January of this year
10 regarding the outlook for telecommunications for 2004, and the discussion appears
11 in the online magazine XCHANGE.¹ In that interview Lenahan was asked:

12
13 XCHANGE: Do you anticipate a significant number of additional
14 bankruptcies by communications companies in 2004?

15 LENAHAN: I think additional CLECs will again file for
16 bankruptcy. Operating models do not make financial sense.

17 (¹ <http://www.x-changemag.com/webextra/411webx4.html?wts=20040708011849&hc=21&req=Lenahan>)
18

19 As stated in my direct testimony, the *only* economic justification for reciprocal
20 security deposits would be if Sprint posed the same risk to KMC that KMC poses to
21 Sprint. If it is Mr. Collins intention to make such an argument in this proceeding,
22 he need only do one thing: Demonstrate comparable risk by producing a
23 comparable list of ILECs that have restructured, declared bankruptcy, ceased

1 operations and/or exited the market leaving KMC with significant unpaid balances
2 that will never be recovered. If Mr. Collins can provide a list of ILECs—
3 comparable to the list of CLECs above—that have declared bankruptcy, etc. and
4 have caused KMC to incur millions of dollars of loss that KMC is entitled to but
5 will never see, Sprint will concede that the risks are equivalent. Of course, Mr.
6 Collins cannot produce such a list because such a list does not exist. The risks are
7 not equivalent, and the uncertainty is not equivalent. Accordingly the need for
8 KMC to obtain a security deposit is not equivalent.

9
10 **Q. Are there additional factors that demonstrate that Sprint is incurring risk that**
11 **KMC is not?**

12 **A.** Yes. Because a wealth of publicly available information exists regarding Sprint's
13 financial condition, neither KMC nor the Commission is forced to rely on mere
14 assumptions when evaluating Sprint's creditworthiness. Both this Commission and
15 KMC have extensive evidence that Sprint is credit-worthy and financially stable.
16 As a publicly traded company Sprint's financial status is evaluated constantly by
17 analysts and investors. Sprint provides financial information to this Commission
18 that can be used to evaluate its credit worthiness. But neither Sprint nor the
19 Commission has comparable evidence regarding KMC. The issue remains, as
20 discussed in my direct testimony, a case of asymmetric information: KMC has
21 concrete evidence of Sprint's financial status, Sprint has no such evidence regarding
22 KMC's financial status, particularly following its emergence from a major financial
23 restructuring. Therefore Sprint faces uncertainty that KMC does not face.
24 Accordingly, Sprint has a need for a deposit to mitigate risk associated with this

1 uncertainty. KMC has no such need because KMC faces no uncertainty caused by a
2 shortage of information.

3

4 **Q. Has Sprint attempted to obtain information regarding KMC's financial status?**

5 ~~A. Yes, and the results only add more uncertainty to the picture. Sprint has requested~~
6 updated financial information from KMC through both its Access Management
7 Department and its Risk Strategy & Credit Department, and KMC has not provided
8 this information. Given KMC's reluctance to provide financial data, one cannot
9 help but wonder exactly *why* KMC does not wish to reveal financial information. It
10 is logical to think that if a CLEC was on sound financial footing it would welcome
11 the opportunity to demonstrate that it stands apart from other CLECs -- the same
12 CLECs whose operating models, according to KMC CEO Lenahan, make no
13 financial sense. It is also unclear exactly what KMC has in mind when its
14 proposed language discusses "credit rating, publicly available financial data, and/or
15 any other material supplied by the Party requesting services in determining whether
16 "good credit history" has been established". KMC *has* no publicly available
17 financial data that is current, and it has not provided current data privately to Sprint
18 when asked. KMC has no publicly available credit rating from any major bond
19 rating firm, and it is not evaluated by stock analysts.

20

21 **Q. Please summarize your rebuttal testimony.**

22 **A. KMC witness Collins provides no evidence and no reasoned argument as to why**
23 **security deposits should be reciprocal. In the paragraphs above I have provided**
24 **real-world evidence as to why they should *not* be reciprocal: Sprint's extensive**

1 experience writing off millions of dollars of unpaid balances from CLECs
2 demonstrates that Sprint faces a degree of uncertainty and associated risk that KMC
3 simply does not face. This uncertainty is exacerbated by the dearth of available
4 information regarding KMC's financial status, as well as KMC's unwillingness to
5 provide Sprint with data that it has requested. Accordingly, the Commission should
6 approve Sprint's proposed language regarding security deposits.

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

9 A. Yes it does.

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