

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

SPRINT-FLORIDA, INCORPORATED

REBUTTAL TESTIMONY OF

JAMES R. BURT

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1 **Q. Please state your name and address.**

2 **A. My name is James R. Burt. My business address is 6450 Sprint Parkway,**
3 **Overland Park, Kansas 66251.**

4

5 **Q. Are you the same James R. Burt that submitted direct testimony in this**
6 **docket on June 11, 2004?**

7 **A. Yes I am.**

8

9 **Q. What is the purpose of your testimony?**

10 **A. The purpose of my testimony is to rebut KMC's direct testimony presented in this**
11 **case by Timothy J. Gates for issue 2.**

12

13 **Issue 2: How should the parties identify, exchange and compensate traffic**
14 **transported in whole or in part over internet protocol?**

15

16 **Q. Mr. Gates describes VoIP as an information service application on page 5 of**
17 **his Direct Testimony. Has any regulatory authority determined that VoIP**
18 **an information service?**

19 **A. Not to my knowledge. That is the position of several VoIP service providers and**
20 **a question before the FCC and several state commissions, but I am not aware of**

1 any affirmative orders of the FCC or a state commission that define VoIP as an
2 information service. To the contrary, in its recent ruling on AT&T's Request for
3 Declaratory Ruling, the FCC held that VoIP traffic meeting certain criteria
4 constitutes a telecommunications service and is subject to applicable intercarrier
5 compensation mechanisms, including access charges, based on the jurisdiction of
6 the traffic. While the United States District Court for the District of Minnesota
7 recently found VoIP to be an information service, this decision was in the context
8 of granting a permanent injunction against enforcement of the Minnesota Public
9 Utilities Commission's decision that a VoIP carrier is a telecommunications
10 carrier subject to the PUC's regulatory rules, including obtaining a certificate of
11 authority to provide telephone service and filing tariffs, and did not address
12 intercarrier compensation issues, Vonage Holdings Corp. v. The Minnesota
13 Public Utilities Commission, 290 F.Supp.2d 993 (2003). The New York Public
14 Service Commission also determined that Vonage's service is a
15 telecommunications service and not an information service. Complaint of
16 Frontier Telephone of Rochester, Inc. Against Vonage Holdings Corporation
17 Concerning Provision of Local Exchange and InterExchange Telephone Service
18 in New York State in Violation of the Public Service Law, CASE 03-C-1285 It
19 is Sprint's understanding that the U.S. District Court, Southern District of New
20 York has issued a temporary injunction against enforcement of the New York
21 Commission's order in this proceeding. However, as with the Minnesota case
22 against Vonage, the New York case did not address access charges, it addressed
23 whether Vonage was in violation of New York rules by providing local and
24 interexchange service without proper certification

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1 **Q. Mr. Gates cites to Florida Statute 364.01(3) on page 7 of his Direct Testimony**
2 **and suggests the intent of the statute is to avoid all regulation of VoIP. Is Mr.**
3 **Gates characterization of the statute accurate?**

4 **A.** No. First of all, the statute cited by Mr. Gates includes the phrase “free of
5 **unnecessary regulation.”** Mr. Gates correctly quotes the statute, but then ignores
6 the word “unnecessary” in his interpretation. This single word is critical to
7 understanding how the statute cited by Mr. Gates works in combination with the
8 other provisions of Florida law I cited in my Direct Testimony on pages 13 and
9 14. Section 364.02(12) and Section 364.16(3)(a) & (b) address intercarrier
10 compensation issues, rather than retail service regulation, and suggest that VoIP
11 should be subject to intercarrier compensation. All three statutes must be viewed
12 together to gain a complete understanding of the Florida Legislature’s intent
13 regarding how VoIP should be addressed. The Florida Statutes appropriately
14 differentiate between whether retail regulation should apply to VoIP and how
15 intercarrier compensation should be handled. From a retail perspective VoIP
16 should be free from any unnecessary regulation, but the statutes support Sprint’s
17 position that VoIP should be subject to intercarrier compensation.

18

19 **Q. On page 9 of Mr. Gates Direct Testimony he says that imposing access**
20 **charges on VoIP is not in the public interest and is equivalent to regulating**
21 **the Internet. Do you agree?**

22 **A.** No. Mr. Gates mistakenly equates the application of intercarrier compensation to
23 regulation of the Internet. Nothing could be further from the truth. As I stated in
24 my Direct Testimony on page 9, regulating some aspects of an application that
25 happens to utilize the public Internet is not regulating the Internet itself. What
26 KMC is trying to establish is an unfair competitive advantage for its voice service

1 (regardless of whether it uses the public Internet) over voice service providers that
2 don't happen to use the Internet protocol. The mystique of the Internet is often
3 invoked when it works to one's advantage to politicize the issue. If KMC really
4 believes that the viability of the Internet is at stake, it would suggest that only
5 ⁵ VoIP that actually uses the public Internet should be free from access charges.
6 Regardless, Sprint's position would be the same. Sprint should be compensated
7 for VoIP traffic that utilizes Sprint's network based on the current intercarrier
8 compensation system that is in place today until such time as that system is
9 changed. (Sprint is aware of and actively participating in the FCC's review of the
10 current intercarrier compensation system.)
11

12 **Q. Mr. Gates cites Verizon's CEO, Mr. Ivan Seidenberg on page 11 and 12 of**
13 **his Direct Testimony to suggest Verizon's support of KMC's position on**
14 **access charges. Do you agree with Mr. Gates assessment of Verizon's**
15 **position?**

16 **A.** Not at all. Again, Mr. Gates is looking at retail regulation and the application of
17 access charges on VoIP as the same issue. They are not. Mr. Seidenberg's
18 statements are consistent with Verizon's position on retail regulation, but this
19 does not suggest Verizon holds the same position on intercarrier compensation.
20 In fact, in its initial comments in the FCC's proposed rulemaking on VoIP (CC
21 Docket No. 04-36), Verizon has made its position very clear that access charges
22 should apply to VoIP and other IP-enabled services that use the PSTN.
23

24 **Q. Mr. Gates states on page 4 and 13 of his Direct Testimony that VoIP is**
25 **currently handled on a bill and keep basis between Sprint and KMC. Is that**
26 **accurate?**

1 A. No. The interconnection agreement that KMC and Sprint are operating under
2 during the pendency of this arbitration provides for bill and keep for local
3 telecommunications traffic and ISP-bound traffic. However, the interconnection
4 agreement does not impose this bill and keep regime on toll traffic. The issue of
5 what compensation applies to interexchange (toll) traffic that is transported in
6 whole or in part over Internet protocol is exactly the issue upon which Sprint and
7 KMC disagree. Contrary to Mr. Gates statement that bill and keep currently
8 applies to this traffic, as I have stated in my direct testimony and reiterate here,
9 Sprint believes that access charges should and do apply.

10

11 **Q. Please summarize your position on issue 2.**

12 A. VoIP is a real-time voice service that utilizes a different technology at some point
13 along the transmission path. It is Sprint's position that the use of a different
14 technology does not change the nature of the service being provided or the use of
15 Sprint's network at the originating or terminating end of the call. Therefore,
16 access charges should apply for VoIP traffic that originates or terminates on
17 Sprint's network. Sprint believes that the Florida Public Service Commission will
18 be acting consistent with Florida law by addressing the access issue separately
19 from retail regulation. Mr. Gates has not provided any justification for why
20 access charges should not apply to VoIP traffic that is terminated on Sprint's
21 network in the same manner as any other voice traffic, other than to create a cost
22 advantage for KMC at the expense of Sprint.

23

24 **Q. Does that conclude your testimony?**

25 A. Yes.