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COMMISSION
CLERK

February 14, 2005

BY HAND DELIVERY

Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 031047-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of KMC Telecom III LLC, KMC Telecom V, Inc. and KMC Data LLC are an original and fifteen copies of the Direct Supplemental Testimony of Marva Brown Johnson on behalf of KMC Telecom III LLC, KMC Telecom V, Inc. and KMC Data LLC in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

CMP

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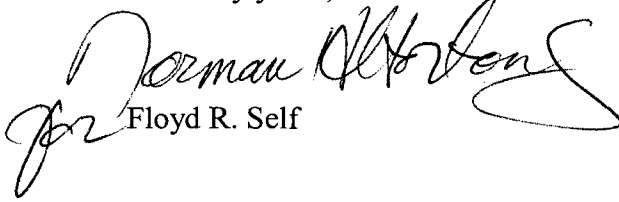
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cc: Marva Brown Johnson, Esq.

SEC Parties of Record

OTH

Sincerely yours,



Floyd R. Self

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1 **Q. PLEASE STATE YOUR NAME FOR THE RECORD.**

2 A. My name is Marva Brown Johnson.

3 **Q. WHO IS YOUR EMPLOYER AND WHAT IS YOUR BUSINESS**
4 **ADDRESS?**

5 A. I am employed by KMC Telecom Holdings, parent company of KMC
6 Telecom V, Inc., KMC Data LLC, and KMC Telecom III LLC. My business
7 address is 1755 North Brown Road, Lawrenceville, Georgia 30043.

8 **Q. WHAT IS YOUR JOB TITLE AND WHAT ARE YOUR**
9 **RESPONSIBILITIES?**

10 A. I am Vice President and Senior Regulatory Counsel. I also hold the officer
11 position of Assistant Secretary.

12 **Q. PLEASE DESCRIBE YOUR POSITION AT KMC.**

13 A. I manage the organization that is responsible for federal regulatory and
14 legislative matters, state regulatory proceedings and complaints, and local
15 rights-of-way issues. I am also an officer of the company and I currently
16 serve in the capacity of Assistant Secretary.

17 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
18 **BACKGROUND.**

19 A. I hold a Bachelors of Science in Business Administration (BSBA), with a
20 concentration in Accounting, from Georgetown University; a Masters in
21 Business Administration from Emory University's Goizuetta School of
22 Business; and a Juris Doctor from Georgia State University. I am
23 admitted to practice law in the State of Georgia.

1 I have been employed by KMC since September 2000. I joined KMC as
2 the Director of ILEC Compliance; I was later promoted to Senior
3 Regulatory Counsel and this is the position that I hold today.

4 Prior to joining KMC as the Director of ILEC Compliance, I had over eight
5 years of telecommunications-related experience in various areas including
6 consulting, accounting, and marketing. From 1990 through 1993, I worked
7 as an auditor for Arthur Andersen & Company. My assignments at Arthur
8 Andersen spanned a wide range of industries, including
9 telecommunications. In 1994 through 1995, I was an internal auditor for
10 BellSouth. In that capacity, I conducted both financial and operations
11 audits. The purpose of those audits was to ensure compliance with
12 regulatory laws as well as internal business objectives and policies. From
13 1995 through September 2000, I served in various capacities in MCI
14 Communications' product development and marketing organizations,
15 including as Product Development – Project Manager, Manager - Local
16 Services Product Development, and Acting Executive Manager for
17 Product Integration. At MCI, I assisted in establishing the company's local
18 product offering for business customers, oversaw the development and
19 implementation of billing software initiatives, and helped integrate various
20 regulatory requirements into MCI's products, business processes, and
21 systems.

22 **Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE**
23 **SUBMITTED TESTIMONY.**

1 **A.** I have submitted testimony in proceedings before the following
2 commissions: the North Carolina Utilities Commission; the Florida Public
3 Service Commission; the Georgia Public Service Commission; the
4 Louisiana Public Service Commission; and the Tennessee Regulatory
5 Authority.

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 **A.** I am providing supplemental testimony on KMC's behalf in support of
8 KMC's basic position on the only open issue in this interconnection
9 agreement arbitration proceeding. Testimony previously was submitted in
10 this docket on KMC's behalf by Tim Gates on June 11 and July 9, 2004. In
11 this supplemental testimony, I will offer additional testimony on why KMC
12 urges this Commission to direct the parties to exchange Voice over
13 Internet Protocol ("VoIP") traffic over local interconnection trunks and to
14 treat it as local traffic until the Federal Communication's Commission
15 ("FCC") completes its *IP-Enabled Services and Intercarrier Compensation*
16 rulemaking proceedings. I will also explain why this Commission, in any
17 event, should not address the thorny unresolved policy issues relating to
18 intercarrier compensation for VoIP in the framework of a two-party
19 arbitration such as this. Rather, such issues, if they are to be addressed
20 by this Commission at all, should be addressed only in a generic
21 proceeding in which all affected parties can participate.

22 **Q. PLEASE DESCRIBE THE ISSUE BEFORE THE COMMISSION AND**
23 **KMC'S POSITION.**

1 A. Certainly. During the period of time that the parties' interconnection
2 agreement will be in effect, the parties will exchange numerous types of
3 traffic over interconnection trunks. The parties will exchange traffic that is
4 transported in whole or in part using Internet protocol. To date, such
5 traffic has generally not been subject to access charges. In fact, the
6 appropriate intercarrier compensation, if any, for such traffic is under
7 comprehensive review for the first time by the FCC in two proceedings,
8 namely its *IP-Enabled Services* (WC Docket No. 04-36) and its *Intercarrier*
9 *Compensation* (Docket No. 01-92) rulemakings. KMC's position is that the
10 *status quo* should prevail until the FCC announces in those two
11 proceedings how carriers are to treat this traffic for compensation
12 purposes.

13 For purposes of the issue identified in this docket, KMC is only taking
14 issue with Sprint with respect to VoIP traffic. KMC proposes that VoIP
15 traffic should be exchanged via the local interconnection trunk group and
16 be subject to reciprocal compensation, except where the FCC expressly
17 has found or finds otherwise. KMC proposes the following contract
18 language to address this issue:

19 4.10. VOIP traffic shall be routed via the local interconnection trunk
20 group and shall be subject to the local reciprocal compensation
21 provisions of this Agreement. Notwithstanding the foregoing, and
22 without waiving any rights with respect to either Party's position as
23 to the jurisdictional nature of VOIP, the Parties agree to amend this
24 Agreement in accordance with the General Terms and Conditions
25 of this Agreement to abide by any effective and applicable FCC
26 rules and orders regarding the nature of such traffic and the
27 compensation payable by carriers and other providers for such
28 traffic, if any. Both Parties reserve the right to advocate their

1 respective position before state or federal commissions regarding
2 the nature of such traffic and the compensation payable by carriers
3 and other providers for such traffic, if any. Notwithstanding
4 anything else in this agreement, the Parties agree that traffic
5 transported in whole or in part using Internet protocol that falls
6 within the scope of either the FCC's pulver.com or AT&T
7 Declaratory Ruling decisions from 2004 is currently governed by
8 and subject to those Orders, with the necessary recognition that the
9 FCC has stated that those Orders do not pre-judge the outcome of
10 the ongoing *IP-Enabled Services* rulemaking.

11
12 **Q. DOES THIS REPRESENT A CHANGE IN KMC'S POSITION FROM**
13 **WHEN MR. GATES TESTIMONY WAS SUBMITTED?**

14 A. Fundamentally, there has not been a change. KMC has always
15 maintained that this traffic should not be subject to access charges.
16 However, previous KMC proposed language presented in the issues
17 matrix was an attempted compromise in effort to reach closure on this
18 issue. Given the current procedural posture of this arbitration, KMC now
19 proposes that such traffic be subject to reciprocal compensation until such
20 time as the FCC expressly finds otherwise.

21 **Q. WHAT IS SPRINT'S POSITION?**

22 A. Simply stated, Sprint disagrees with KMC. However, while rejecting KMC's
23 proposed language, Sprint has proposed that all VoIP traffic that touches
24 the PSTN should be treated as telecommunications service and be
25 subject to intrastate or interstate access charges as applicable. Sprint has
26 suggested in its previous testimony on this issue that VoIP, in almost all
27 cases, is simply a ploy by providers to avoid access charges. Thus,
28 according to Sprint, even if a voice communication begins on a broadband
29 connection or a dial-up connection to the Internet, and involves a net

1 protocol conversion from IP to TDM or even enhanced features and
2 functionalities, that service should be deemed a telecommunications
3 service and subject to access charges if the originating and terminating
4 “callers” are not physically located within the boundaries of local telephone
5 calling areas. Under the FCC’s current regulations, a net protocol
6 conversion makes a service an enhanced service, not a
7 telecommunications service.

8 **Q. YOU STATED PREVIOUSLY THAT THE TRAFFIC IN QUESTION**
9 **GENERALLY HAS NOT BEEN SUBJECT TO ACCESS CHARGES.**
10 **WHY DID YOU OFFER THE QUALIFICATION?**

11 A. As I noted in response to an earlier question, the FCC has undertaken a
12 comprehensive regulatory examination of VoIP traffic and other IP-
13 enabled services in two pending rulemaking proceedings. Under current
14 and long-standing FCC policy, IP Telephony and other IP-based offerings
15 were not treated as telecommunications services. Indeed, the FCC, when
16 initiating its *Intercarrier Compensation* rulemaking in 2001, recognized that
17 historically the FCC had not imposed access charges on VoIP traffic. The
18 FCC stated clearly in its Notice of Proposed Rulemaking that “IP
19 telephony [is] generally exempt from access charges.”¹ Instead, IP
20 Telephony has historically been treated the same as other enhanced
21 traffic, in particular, as local traffic. This general treatment of VoIP traffic
22 has its roots in the FCC’s enhanced services access charge exemption

1 adopted upon the break-up of AT&T. In 1983, the FCC determined that
2 providers of enhanced services would be exempted from access charges
3 as the FCC instituted the access charge regime under which the LECs, in
4 large part, still operate today for purposes of intercarrier compensation
5 with interexchange carriers.² That exemption was reaffirmed five years
6 later,³ and then again in 1997.⁴

7 With the emergence of the first forms of VoIP telephony, the FCC first
8 reviewed questions regarding the appropriate compensation for such
9 services in the context of a larger review of universal service issues. In its
10 resulting *Report to Congress* in 1998, the FCC contended that it did not
11 have an adequate record on which to conclude that any form of VoIP
12 services should be subject to access charges.⁵ The FCC reached no
13 definitive conclusions regarding the regulatory classifications of *any type*
14 *of IP Telephony*. The FCC, in fact, prefaced its entire discussion of the IP-
15 Telephony issue with the unequivocal caveat: "We do not believe,
16 however, that it is appropriate to make any definitive pronouncements in
17 the absence of a more complete record focused on individual service

¹ *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9613 (2001).

² *MTS and WATS Market Structure*, 97 FCC 2d 682, 715 (1983).

³ *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, Order, 3 FCC Rcd 2631 (1988).

⁴ *Access Charge Reform*, 12 FCC Rcd 15982, 16133 (1997).

⁵ *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998) ("Report to Congress").

1 offerings.”⁶ Again, once the Commission engaged in its brief and tentative
2 analysis in the *Report*, it explained further that

3 [b]ecause of the wide range of services that can be
4 provided using packetized voice and innovative CPE,
5 we will need, *before making definitive*
6 *pronouncements*, to consider whether our tentative
7 definition of phone-to-phone IP telephony accurately
8 distinguishes between phone-to-phone and other
9 forms of IP telephony, and is not likely to be quickly
10 overcome by changes in technology. We defer a
11 more definitive resolution of these issues pending the
12 development of a more fully-developed record
13 because we recognize the need, when dealing with
14 emerging services and technologies in environments
15 as dynamic as today’s Internet and
16 telecommunications markets, to have as complete
17 information and input as possible.⁷

18 The Commission also noted that, even were it to conclude in some future
19 rulemaking proceeding in which a full record was developed, that certain
20 forms of IP Telephony were telecommunications services, it did not follow
21 that the providers of those services would pay the same access charges
22 as carriers offering circuit-switched interexchange services. The
23 Commission anticipated that, in that event, it would “face difficult and
24 contested issues related to the assessment of access charges on these
25 providers.”⁸

26 Since then, the FCC has examined several discrete situations involving
27 certain VoIP services and addressed whether access charges should
28 apply. Notably, in only one of these, the so-called *AT&T Declaratory*

⁶ *Id.* at 11541.

⁷ *Id.* at 11544 (emphasis added).

1 *Ruling* issued in April 2004,⁹ has the FCC concluded that access charges
2 are proper. In that decision, the FCC emphasized the narrowness of its
3 decision, namely that where Internet protocol is used solely for
4 transmission purposes for 1+-dialed interexchange calls, there is no net
5 protocol conversion, and there are no enhanced features or functionalities
6 enabled by the use of the IP, the traffic in question is telecommunications
7 services traffic and is subject to access charges.¹⁰

8 **Q. DOES KMC CONTEST WHETHER ACCESS CHARGES SHOULD**
9 **APPLY TO THE TYPE OF TRAFFIC ADDRESSED IN THE AT&T**
10 **DECLARATORY RULING?**

11 A. No. KMC has made clear to Sprint and the Commission, specifically
12 during the discussions surrounding the issues to be addressed in this
13 arbitration, that KMC will abide by the *AT&T Declaratory Ruling*. I would
14 note, however, that the FCC made clear that its declaratory ruling was
15 both narrow and temporary in nature.¹¹ The FCC stated that the treatment
16 of the specific type of VoIP traffic at issue in the *AT&T Declaratory Ruling*

⁸ *Id.* at 11545.

⁹ *Petition for Declaratory Ruling that AT&T's IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97, Order (Apr. 21, 2004).

¹⁰ *Id.* ¶ 18.

¹¹ *Id.* ¶ 10 (stating that the order represented the FCC's analysis "of one specific type of service under existing law based on the record compiled in [that] proceeding. It in no way precludes the Commission from adopting a fundamentally different approach when it resolves the IP services rulemaking, or when it resolves the *Inter-carrier Compensation* proceeding.") (citations omitted).

1 was subject to change based upon its more comprehensive review in the
2 *IP-enabled Services and Intercarrier Compensation* proceedings.¹²

3 **Q. SINCE THE AT&T DECLARATORY RULING, HAS THE FCC ISSUED**
4 **ANY MORE PRONOUNCEMENTS ON THE TREATMENT OF VOIP**
5 **TRAFFIC?**

6 A. Not specifically, but it has given every indication that the resolution of
7 VoIP-related issues, such as those presented in this arbitration, are within
8 its jurisdiction alone. In November 2004, the FCC preempted the
9 Minnesota Public Utilities Commission from regulating certain VoIP
10 services offered by Vonage.¹³ The FCC stated that the nature of the VoIP
11 services at issue brought Vonage's IP-based offerings into the sole
12 regulatory jurisdiction of the FCC. However, the FCC, while preempting
13 the Minnesota PUC, did not reach a determination whether the VoIP
14 services at issue were information services or telecommunications
15 services, and thus did not reach any questions regarding the
16 compensation between carriers that exchanged traffic that originated with
17 or terminated to a Vonage end user. Notably, the FCC stated that it would
18 preempt any effort by other state commissions to regulate certain
19 categories of VoIP service.¹⁴ The FCC did not exclude the prospect that it
20 would preempt attempts to regulate other types of VoIP services as well.

¹² *Id.*

¹³ *Vonage Holdings Corporation Petition for a Declaratory Ruling Concerning an Order of Minnesota Public Utilities Commission*, Memorandum Opinion and Order, WC Docket No. 03-211, FCC 04-267 (rel. Nov. 12, 2004) ("Vonage Order").

¹⁴ See *id.* ¶ 32.

1 Q. HAS THE FLORIDA COMMISSION COMMENTED ON THE ROLE OF
2 THE FCC IN FASHIONING THE APPROPRIATE FRAMEWORK FOR
3 THE TREATMENT OF VOIP AND OTHER IP-ENABLED SERVICES?

4 A. Yes. This Commission submitted Reply Comments in the FCC's *IP-*
5 *Enabled Services* rulemaking on July 14, 2004. The Commission stated
6 clearly that, in its view, "IP-enabled services like VoIP are truly 'borderless'
7 and, thus, necessarily interstate in nature."¹⁵ The Commission went on to
8 state that, because of the interstate nature of IP-enabled services,
9 including VoIP, "the regulatory treatment of such services belongs at the
10 federal level,"¹⁶ and a national policy framework should be developed by
11 the FCC rather than allowing "a patchwork of fifty different state policies."¹⁷
12 The Commission argued vociferously for the FCC to adopt general rules,
13 but noted that because "IP-enabled services come in a variety of
14 categories, . . . at least until such generally applicable rules can be (and
15 are) crafted, any attempt to categorize the different categories of IP-
16 enabled services (if deemed necessary) can, until such time as clear rules
17 are developed, only rationally occur on a case-by-case basis."¹⁸ KMC
18 agrees with the PSC's approach as outlined in these reply comments.
19 While KMC agrees that, until the FCC changes the effect of the ruling, it
20 will follow the finding in the *AT&T Declaratory Ruling* regarding the types

¹⁵ Reply Comments of the Florida Public Service Commission, WC Docket No. 04-36 (dated July 14, 2004) at 3.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 5.

1 of traffic described therein, any additional types of IP-enabled traffic that
2 are subject to access charges will have to await either the FCC's rulings in
3 the pending rulemakings or specific case findings by the FCC, which has
4 exclusive jurisdiction over such traffic.

5 **Q. WOULD A DECISION BY THE FLORIDA PSC THAT VOIP SERVICES**
6 **ARE SUBJECT TO ACCESS CHARGES AMOUNT TO REGULATING**
7 **VOIP SERVICES?**

8 A. Yes. Inherent in any such determination would be the conclusion that
9 such services are telecommunications services. Additionally, the
10 conclusion would be inescapable that the VoIP provider would be a
11 provider of telecommunications services. As such, it would seem
12 inevitable that the provider's VoIP services would become subject to PSC
13 regulation of entry and the imposition of other telecommunications carrier-
14 type requirements. The FCC stated in the Vonage decision that it *would*
15 preempt the states from regulating VoIP services.¹⁹ For this reason alone,
16 KMC's position is this arbitration should prevail and the parties should
17 defer until the FCC completes its pertinent rulemakings.

18 **Q. DOES KMC OFFER VOIP SERVICES OR OTHER IP-ENABLED**
19 **SERVICES TO ITS CUSTOMERS?**

20 A. No, it does not. At this time, KMC does not utilize Internet Protocol within
21 its network to provide retail services. KMC does provide services, on a

¹⁸ *Id.* at 17.

¹⁹ See *Vonage Order*, ¶¶ 32, 46.

1 wholesale basis, to enable enhanced service providers the ability to
2 deliver VoIP services to the end users of enhanced service providers.

3 **Q. YOU INDICATED PREVIOUSLY THAT ISSUES REGARDING**
4 **TREATMENT OF IP-ENABLED SERVICE SHOULD NOT BE**
5 **DETERMINED IN A TWO-PARTY PROCEEDING SUCH AS THIS**
6 **ARBITRATION. PLEASE EXPLAIN YOUR BASIS FOR THIS**
7 **STATEMENT.**

8 A. As explained above, the Commission itself, in its Reply Comments,
9 indicated that the FCC should address such matters in a comprehensive
10 fashion to develop a national framework. KMC agrees, but argues that
11 there are practical reasons as well. As Mr. Gates noted in his reply
12 testimony in this Docket, in many cases the terminating carriers of VoIP
13 communications, such as KMC and Sprint-FL, will not even know that a
14 call may be IP-enabled or involve enhanced features and functionalities
15 because, on that portion of its path, the communication may be in TDM-
16 format only. In the simplest case, a traditional circuit-switched local
17 telephone call exchanged between two local carriers such as KMC and
18 Sprint may originate on the party's network and terminate on the other's.
19 The two carriers alone route and transport the traffic from origination to
20 termination. A traditional circuit-switched interexchange call introduces a
21 third carrier, the IXC, which uses the facilities of a LEC on each end of the
22 call for originating and terminating access. With the introduction of local
23 competition a decade ago, oftentimes two LECs might be involved on one

1 or both ends of the call, and where that does happen, access service to
2 the IXC is typically provided on a joint or meet-point basis. Increasingly,
3 traffic does not meet these basic patterns, but instead falls into almost a
4 limitless number of configurations. Three local exchange carriers may be
5 involved on both ends of communications between end users in distant
6 locations. One or more enhanced service or information service or
7 broadband service providers may be involved on the origination or
8 terminating ends, complementing or even displacing the LEC(s). These
9 same providers may also be involved in the "middle" of the
10 communications, using IP to provide features and functionalities to the
11 called and or calling parties not available on traditional telephone calls.
12 Instead of all points of the communications traveling over circuit-switched
13 facilities, part of the communication may involve IP or other packet
14 switching. Indeed, packet switching may be involved at more than one
15 point along the call path. IP or other packet-switched features and
16 functionalities may be present and qualify a particular service for treatment
17 as an enhanced service, or they may not. Admittedly, in some cases, the
18 use of IP or packet-switched protocols might be solely for efficiency of
19 transmission and not add enhanced capabilities to the end users or
20 involve any net protocol conversion. But often the terminating carriers, or
21 the originating carriers, on a communication may receive and route the
22 traffic in a TDM format only and be unaware of any enhanced feature or
23 functionalities, net protocol conversion, or use of packet switching

1 technology. It may be appropriate—the FCC is considering this very point
2 in its *Enhanced Services Proceeding*—that some of the traffic is subject to
3 access charges (as the FCC found on an interim basis for the traffic
4 considered in the *AT&T Declaratory Ruling*), some of it may be treated as
5 local as under the *status quo*, or some of it may be treated under a
6 different form of compensation altogether.

7 What is clear, however, is that today, two carriers such as Sprint and KMC
8 terminating a communication that at some earlier point involved IP or
9 enhanced features and functionalities currently have no way, from a pure
10 network perspective, of distinguishing any such communication as
11 enhanced or not. The terminating LECs cannot distinguish traffic that falls
12 within the *AT&T Declaratory Ruling* category from that which does not.
13 Instead, the carriers must rely on the representations made to them from
14 upstream providers that the traffic is enhanced or it is not, that each
15 provider is an enhanced service provider or a telecommunications carrier.
16 Accordingly, to develop the record needed to examine a framework by
17 which carriers can move away from the *status quo*, whereby most IP
18 telephony is treated as local and access charges do not apply, local and
19 interexchange carriers, as well as broadband and enhanced providers
20 must be involved. That cannot happen in this two-party arbitration. More
21 importantly, it is already happening at the FCC, which is why KMC urges
22 the parties to defer to the results in that proceeding.

1 Q. WHAT ARE THE DANGERS IF THE COMMISSION PROCEEDS TO
2 DEVELOP A FRAMEWORK FOR TREATMENT OF VOIP TRAFFIC IN
3 THE CONTEXT OF THIS PROCEEDING?

4 A. The danger is that, with an inadequate record, and input from only two of
5 many carriers and providers in Florida markets, the Commission will
6 simply add to chaos that the FCC is trying to sort through in the
7 *Intercarrier Compensation* and *IP-Enabled Services* proceedings by
8 creating a new exception or special situation. Indeed, Sprint Corporation,
9 in its Comments on a petition filed at the FCC in WC Docket No. 03-266
10 by Level 3 seeking regulatory forbearance as a preventative measure
11 against the application of access charges on IP traffic that originates or
12 terminates on the public switched telephone network or on PSTN-PSTN
13 traffic that is incidental to such IP traffic, was urging the FCC to decline to
14 rule on the Level 3 petition outside of a broader comprehensive
15 rulemaking. Sprint stated:

16 [T]he existing intercarrier compensation mechanisms
17 are tangled and often irrational, with intercarrier
18 payments varying substantially depending upon the
19 jurisdiction of the call (local carrier, intrastate, or
20 interstate), the identity of the carrier (local carrier,
21 IXC, ESP, CMRS provider), and type of traffic
22 (telecommunications, information service, ISP-
23 bound). Sprint heartily agrees that rational reform of
24 this patchwork of rules is critical to the health of the
25 industry, and is long overdue.²⁰
26

²⁰ Comments of Sprint Corporation, WC Docket No. 03-266 (March 1, 2004).

1 Sprint went on to explain its preference that these issues be resolved as
2 part of a comprehensive proceeding, indeed the FCC's *IP-Enabled*
3 *Services* proceeding:

4 Given what is expected to be an ever-growing volume
5 of voice-embedded IP traffic, the Commission must
6 carefully consider the impact of [granting the relief
7 Level 3 seeks] not just on the VoIP segment of the
8 market, but also on competition in the voice market
9 generally, on LEC access revenues, and on universal
10 service. Regulation of VoIP services cannot be
11 considered in a vacuum, and the ramifications of [the
12 relief Level 3 seeks] are best considered in a
13 comprehensive fashion.

14
15 The Commission has already initiated such a broad
16 proceeding, adopting a NPRM which will examine "the
17 appropriate regulatory treatment of Internet services,"
18 specifically considering "which regulatory
19 requirements - for example, those relating to E911,
20 disability accessibility, *access charges*, and universal
21 service - should be extended to different types of
22 Internet services[.]... the legal and regulatory
23 framework for each type of Internet service and the
24 relevant jurisdictional considerations for each
25 category." [footnote omitted] *Because the record and*
26 *the Commission's findings in the rulemaking*
27 *proceeding will directly address the narrower issues*
28 *raised in Level 3's petition (i.e., the impact of access*
29 *charges on voice-embedded IP traffic), as well as*
30 *broader legal and social policy questions relating to*
31 *VoIP regulation, it is reasonable to decide questions*
32 *of access charge relief in the rulemaking rather than*
33 *the forbearance proceeding.* Because regulatory
34 uncertainty is costly and undesirable (Level 3 Petition,
35 p. 39), Sprint urges the Commission to issue an order
36 in the rulemaking proceeding expeditiously, preferably
37 before the statutory deadline for acting on Level 3's
38 petition.²¹
39

²¹ *Id.* at 3.

1 KMC would welcome an expeditious resolution to the FCC's *Intercarrier*
2 *Compensation* and *IP-Enabled Services* rulemakings. However, until the
3 FCC does rule, the *status quo* should prevail. As Sprint noted in its
4 comments on the Level 3 petition, "[b]ecause the record and the
5 Commission's findings in the [*IP-Enabled Services*] rulemaking proceeding
6 will directly address . . . the impact of access charges on voice-embedded
7 IP traffic[], as well as broader legal and social policy questions relating to
8 VoIP regulation, it is reasonable to decide questions of access charge
9 relief in the rulemaking . . ." than in proceedings that present narrower
10 issues and a narrower record.

11 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL DIRECT**
12 **TESTIMONY?**

13 **A.** Yes, it does.

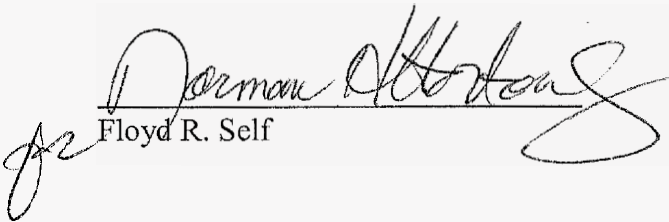
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been served upon the following parties by hand delivery (*), e-mail and/or U.S. Mail this 14th day of February, 2005.

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