

ORIGINAL



Susan S. Masterton
Attorney

Law/External Affairs
FLTLH00103
1313 Blair Stone Rd.
Tallahassee, FL 32301
Voice 850 599 1560
Fax 850 878 0777
susan.masterton@mail.sprint.com

RECEIVED FPSC
FEB 15 PM 4:44
COMMISSION
CLERK

February 15, 2005

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 are

- 1. The original and 15 copies of Sprint's Motion to Compel 01557-05
- 2. The original and 15 copies of the attachments A-I 01558-05

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

Please acknowledge receipt of this filing by stamping and initialing a copy of this letter and returning same to my assistant. If you have any questions, please do not hesitate to call me at 850/599-1560.

Sincerely,

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH Kim P

Susan S. Masterton

Susan S. Masterton

Enclosure

RECEIVED & FILED
On
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
01557 FEB 15 05
FPSC-COMMISSION CLERK

*Done
02/16/05
KMP*

**CERTIFICATE OF SERVICE
DOCKET NO. 041144**

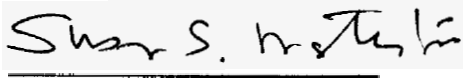
I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic and U.S. mail this 15th day of February, 2005 to the following:

Division of Legal Services
Lee Fordham/ Dovie Rockette-Gray
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

KMC Data LLC/KMC Telecom III LLC/KMC Telecom V, Inc.
Marva B. Johnson
1755 North Brown Road
Lawrenceville, GA 30043-8119

Kelley Drye & Warren LLP
Yorkgitis/Mutschelknaus/Soriano
1200 19th Street, N.W.,
Fifth Floor
Washington, DC 20036

Messer Law Firm
Floyd R. Self, Esq.
P.O. Box 1876
Tallahassee, FL 32302-1876



Susan S. Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| Complaint of Sprint-Florida, Incorporated) 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.) | Docket No. 041144-TP Filed: February 15, 2005 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|

SPRINT-FLORIDA, INCORPORATED'S MOTION TO COMPEL

In accordance with Rule 28-106.204 and 28-106.206, Florida Administrative Code, and Florida Rule of Civil Procedure 1.380(a), Sprint-Florida, Incorporated ("Sprint" or the "Company") requests that the Florida Public Service Commission ("FPSC" or "Commission") or the prehearing officer enter an order compelling KMC Telecom III LLC, KMC Telecom V, Inc. and KMC Data LLC (collectively "KMC") to fully and meaningfully, in accordance with the Florida Rules of Civil Procedure, answer Sprint's First Set of Interrogatories and First Request for Production of Documents (PODs), served on KMC by Sprint on November 15, 2004. (See Attachment A) KMC served Sprint with its initial Responses to Sprint's First Set of Interrogatories and First Requests for Production of Documents on January 5, 2005. (See Attachment B) KMC subsequently provided "Supplemental Responses" on January 28, 2005. (See Attachment C) However, these purported responses, in addition to being untimely, were for the most part evasive and unresponsive to Sprint's requests, as will be more fully discussed in this Motion.

It has been three months since Sprint served its discovery requests, yet KMC still has not fully responded to provide requested information that is relevant and necessary for Sprint to pursue its Complaint. For this reason, Sprint requests that the Commission order KMC to respond to the

discovery as set forth herein without delay, but no later than one week from the issuance of an order compelling discovery.

Background

1. Sprint filed its Complaint against KMC on September 24, 2004 alleging that KMC had violated section 364.16(3)(a), Florida Statutes, by knowingly terminating interexchange traffic otherwise subject to access charges over its local interconnection arrangements with Sprint in violation of the statute. In addition, Sprint alleges in its Complaint that KMC's termination of interexchange traffic over local interconnection trunks violated the interconnection agreements between the parties and that KMC's failure to pay applicable intrastate access charges violated the interconnection agreement and Sprint's tariffs. Finally, Sprint's Complaint alleges that because of KMC's wrongful termination of access traffic over local interconnection trunks, Sprint overpaid reciprocal compensation due KMC.

2. While KMC has not submitted an answer to Sprint's Complaint, KMC did file a Motion to Dismiss the Complaint on October 14, 2004, which contained certain factual allegations relating to the actions complained of by Sprint, including allegations that the traffic at issue was traffic that was delivered to KMC by an "enhanced service provider" (Motion to Dismiss at ¶ 18) and allegations that KMC V and KMC Data, LLC are not proper parties to the Complaint (Motion to Dismiss at ¶¶16-17). KMC's Motion to Dismiss was ultimately denied by the Commission. In its Motion and at the Agenda Conference during which the Motion to Dismiss was considered, KMC represented that the issues in the Complaint could not be resolved without the cooperation of the parties. (Motion to Dismiss at ¶ 15, Agenda Conference Transcript at p. 5) Based on these representations, Commissioner Baez asked the parties whether they intended to cooperate in discovery so that the information necessary to resolve the Complaint would be available to the

parties and the Commission. KMC's counsel responded that that was KMC's intent. Agenda Conference Transcript at pp. 7 & 8) Unfortunately, KMC's behavior has not fulfilled this promise. Rather, through its objections and failure to meaningfully respond to Sprint's discovery requests, KMC has refused to cooperate in Sprint's attempts to gather information from KMC that is necessary for resolution of this dispute.

3. Discovery in administrative proceedings involving disputed issues of material fact is governed by the discovery rules set forth in the Florida Rules of Civil Procedure (hereinafter, "Discovery Rules").¹ Accordingly, Sprint served its First Set of Interrogatories (Nos. 1-22) and First Requests for Production of Documents (Nos. 1-11) on KMC on November 15, 2004. Such discovery is permissible at any time after an action is filed, pursuant to Rules 1.340 and 1.350 of the Discovery Rules. Also pursuant to these rules, responses and objections to Sprint's discovery were due on December 15, 2004.

4. On December 14, 2004, KMC's counsel contacted Sprint's counsel and requested additional time to respond to Sprint's discovery. Specifically, KMC's counsel requested that KMC be given until January 4, 2005 to respond to the discovery. Sprint's counsel agreed to this delay with the understanding from KMC's counsel that KMC intended to use this additional time to enable KMC to prepare more complete responses to Sprint's discovery. KMC's counsel represented that it was KMC's intention to respond to the discovery but that KMC desired some clarification of Sprint's requests in order to adequately respond. Counsel for the parties agreed that KMC would provide to Sprint, informally via e-mail, the clarification requests by no later than December 20,

¹ See, Section 120.569, F.S., and Rule 28-106.206, F.A.C. The applicable Florida Rules of Civil Procedure are Rules 1.280-1.400.

2004 to accommodate holiday schedules.² (See e-mail from Sprint’s counsel attached as Attachment D.)

5. Ultimately, KMC’s “Requests for Clarification” were not provided to Sprint until December 23, 2004. (See Attachment E) Because of the intervening holidays, Sprint was unable to respond to the lengthy, and in many instances frivolous, clarification requests until January 3, 2005. (See Attachment F) However, at that time Sprint fully provided the requested clarifications and extended to KMC an additional 10 days (i.e., until January 14, 2005) in which to provide any supplements to its January 4, 2005 responses based on the clarifications provided by Sprint.

6. On January 4, 2005, Sprint received an e-mail from KMC’s counsel indicating that the responses would not, in fact, be provided until January 5, 2005, due to computer problems. On January 5, 2005, a document that purported to be KMC’s responses to Sprint’s discovery was provided, however, the document consisted primarily of objections to Sprint’s discovery rather than answers. In addition, the responses to the Interrogatories were not provided under oath, as required by Rule 1.340 of the Discovery Rules. When this omission was pointed out to KMC’s counsel, a commitment was made to provide the required affidavits within a couple of days. (See Attachment G) However, the affidavits have never been provided to Sprint.

7. For several of the questions (Interrogatory Nos. 10, 14, 15 and 16 and related POD Nos. 5 and 6), KMC indicated that responsive information was proprietary and would be provided once a protective agreement between the parties was executed. In the previous conversation with Sprint’s counsel arranging the extension of the discovery due date, KMC failed to alert Sprint’s

² It should be noted that the time Sprint agreed to for KMC to provide its clarification requests was after the due date for initial responses set forth in the Discovery Rules. The time allowed to respond to discovery in the Discovery Rules is significantly longer than the time generally allowed by the Commission in its procedural orders, that is, the rules allow for 30 days versus the 20 days generally allowed by the Commission. Therefore, KMC had more than sufficient time to provide the necessary clarifications by the agreed upon December 20th date.

counsel that a protective agreement would be necessary in order for KMC to fully respond to the discovery. Nevertheless, Sprint's counsel promptly executed and sent to KMC on January 7, 2005 a protective agreement for this docket. (See Attachment H) KMC's counsel executed this document and provided a small portion of the confidential information that was referred to in the January 5, 2005 responses on January 10, 2005. Supplemental responses, including the referenced confidential information, were provided on January 28, 2005, however, these responses fail to fully comply with the Discovery Rules in that they were not provided under oath as required by Rule 1.340.

8. In accordance with Rule 28-106.204(3), Florida Administrative Code, the undersigned counsel has attempted to work with counsel for KMC to resolve the matters herein, but has been unable to resolve these matters. These attempts are reflected in several e-mails exchanged between Sprint's counsel and KMC's counsel. (See Attachments D-I) Therefore, Sprint files this Motion to Compel and asks the Commission to order KMC to fully and meaningfully respond to Sprint's Interrogatories and Requests for Production of Documents, in accordance with the Discovery Rules, as more fully explained below.

The Rules Require Interrogatory Answers Under Oath

9. Rule 1.340 (e) requires that the answers to Interrogatories be provided under oath. This requirement is necessary to ensure that the information provided may be relied on by the parties and the Commission in resolving the factual issues in dispute. Despite repeated requests, KMC has refused to provide the affidavits reflecting an attestation by the respondents that the answers provided are true. To the extent that an answer is not provided under oath in compliance with the Discovery Rules, it is incomplete and therefore, is in effect a failure to answer pursuant to Rule 1.380(a)(3).

10. Specifically, affidavits are required from the following respondents to meet the requirements of the Rule:

| | |
|---------------------|---------------------------------------------------------------------|
| Timothy E. Pasonski | Interrogatory No. 1 |
| Gary Simerly | Interrogatory Nos. 3, 7, 8, & 9 |
| Myles Falvella | Interrogatory No. 21 |
| Marva Brown Johnson | Interrogatory Nos. 2, 4, 5, 6, 9, 11, 12, 13, 17, 18, 19, 21 and 22 |

11. In addition, none of the supplemental answers provided by KMC on January 28, 2005 were provided under oath as required. Specifically, affidavits are required from the following respondents for the supplemental answers:

| | |
|---------------------|---------------------------------------|
| Marva Brown Johnson | Interrogatory Nos. 10, 14, 15, and 20 |
|---------------------|---------------------------------------|

12. Sprint requests that the respondents be ordered to provide the required affidavits to support their answers, or, if a respondent believes that a previously provided answer cannot be sworn to under oath, the Sprint requests that KMC be ordered to provide a full and truthful sworn answer to each of the Interrogatories identified above, as required by the Discovery Rules.

Argument Regarding Common Objections

13. KMC objected to several of Sprint's Interrogatories and PODs on the grounds of relevancy (See Interrogatory Nos. 2, 3, 4, 9, 17 and 20 and POD Nos. 1, 7 and 10). Rule 1.280(b)(1) of the Florida Rules of Civil Procedure defines the scope of discovery in civil cases:

In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of the other party.... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence.

14. The concept of relevancy in civil cases is broader in the discovery context than in the trial context and a party may be permitted to discover evidence that would be inadmissible at trial, if it would lead to the discovery of relevant evidence. Allstate Insurance Co. v. Langston, 655 So.2d 91 (Fla. 1995).

15. Florida courts have consistently rejected objections like KMC's and have compelled discovery. See, e.g., Behm v. Cape Lumber Co., 834 So.2d 285 (Fla. 2d DCA 2003) (reversing trial court's refusal to allow homeowners to conduct discovery essential to their defenses); Davich v. Norman Bros. Nissan, Inc., 739 So.2d 138 (Fla. 5th DCA 1999) (in an action by a car buyer against the manufacturer and dealer for conspiracy to conceal acid rain damage to his car, the car buyer was permitted to conduct discovery on all documentation pertaining to the sale of vehicles because the discovery would lend "possible support for his actions under FDUTPA and for fraud and deceit.").

16. In addition, this Commission has consistently recognized the broad standard of relevancy inherent in Rule 1.280. See, e.g., *In re: Petition for arbitration of unresolved issues resulting from negotiations with Sprint-Florida, Incorporated for interconnection agreement, by AT&T Communications of the Southern States, LLC d/b/a AT&T and TCG South Florida*, Order No. PSC-03-1014-PCO-TP (Sprint's discovery seeking detailed information relating to VoIP traffic is relevant to the issues in dispute) *In re: Request for arbitration concerning complaint of BellSouth Telecommunications, Inc. against Supra Telecommunications and Information Systems, Inc. for resolution of billing disputes*, Order No. PSC-02-0274-PCO-TP (information requested was reasonably calculated to lead to the discovery of admissible evidence and is, therefore, relevant); *In re Request for arbitration concerning complaint of TCG South Florida and Teleport Communications Group against BellSouth Telecommunications, Inc. for breach of*

terms of interconnection agreement, Order No. PSC-01-1300-PCO-TP (information requested is reasonably likely to lead to the discovery of admissible evidence and is, therefore, relevant).

17. KMC also objects to several of Sprint's requests on the grounds that they are "burdensome" or "overly broad." (See Interrogatory Nos. 2, 4 and 20 and POD Nos. 1 and 10) A party objecting to discovery because it is "burdensome" or "overly broad" must quantify the manner in which the discovery is "burdensome" or "overly broad," First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Ass'n, Inc., 545 So. 2d 502, 503 (Fla. 4th DCA 1989) KMC has failed to do so. Accordingly, KMC's bare objections regarding burden and breadth should be rejected.

18. KMC has also objected to several requests because the information is proprietary or protected by attorney client privilege. (See Interrogatory Nos. 2, 3, 4, 9, 11, 17 and 20 and POD Nos. 1, 4, 7 and 10) As discussed above, the parties have now executed a protective agreement to govern the handling of proprietary and confidential information in this docket, so that the objections based on confidentiality are not valid. As far as privileged information, KMC has not made even the barest attempt to "describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection" as required by Rule 1.280(b)(5) of the Discovery Rules. See TIG Ins. Corp. of America v. Johnson, 799 So. 2d 339 (Fla. 4th DCA 2001). Accordingly, KMC's objections regarding privilege should be rejected.

19. Finally, KMC has objected to several requests on jurisdictional grounds, specifically that the requests were for information outside the jurisdiction of this Commission, including information involving intrastate traffic originating and terminating in other states or interstate traffic. (See Interrogatory Nos. 2, 3, 4, 9, 17 and 20 and POD Nos. 1, 7 and 10). KMC's assertion

that Sprint is requesting information regarding intrastate traffic originating and terminating in other states is incorrect. For the purposes of the Interrogatories and PODs, “Sprint” has been defined to mean Sprint-Florida, Incorporated. Sprint-Florida, Incorporated is a Florida corporation, which is certificated by the Commission and operates as an ILEC in Florida only. Therefore, any requests for information concerning traffic terminated to Sprint involve only traffic that is terminated to Sprint in Florida. KMC’s objection to providing information concerning interstate traffic that is terminated to Sprint-Florida is also invalid. This information is relevant or likely to lead to the discovery of information relevant to Sprint’s claims because it serves to differentiate and identify the amount of traffic that is intrastate and, therefore, subject to intrastate access charges, which clearly is within the Commission’s jurisdiction.

Argument Regarding Specific Discovery Requests

20. Many of KMC’s objections are directed to several of Sprint’s Interrogatories and PODs as discussed above. This section of Sprint’s Motion discusses those objections that relate only to specific Interrogatories or PODs.

21. Sprint’s Interrogatory No. 2 requests information from KMC concerning the number of calls delivered to Sprint by KMC that KMC believes to be Voice over Internet Protocol (VoIP) traffic. Specifically, Interrogatory No. 2 requests:

2. Please state, by number of calls and in MOU by month for the past 24 months, any traffic KMC delivered to Sprint over local interconnection trunks or local PRI circuits that KMC believes to be VoIP traffic.

The FCC has issued various rulings relating to VoIP. Sprint has asked this question to determine if any these FCC orders may be applicable to the Commission’s consideration of Sprint’s Complaint.

22. In addition to several of the common objections discussed above, KMC has objected to this request because it alleges that information concerning VoIP traffic is outside the

Commission's jurisdiction. This is not a valid ground for objection to a discovery request. Rule 1.280 allows discovery of any matter relevant to the subject matter of claim, even if that information might not be admissible at trial. Whether a portion of the traffic upon which Sprint bases its claim, is in fact, traffic outside the Commission's jurisdiction is certainly relevant to Sprint's claim and, therefore, this information is discoverable. Finally, KMC objects to this request on grounds of "vagueness." This objection is invalid because Sprint has defined VoIP for the purpose of the Interrogatory and Sprint intends for KMC to respond fully to the request based on that definition.³

23. Without waiving its objections, KMC purports to respond with a statement that is essentially incomprehensible to Sprint. If KMC is intending to convey that it does not believe that any of the traffic that it delivers to Sprint over local interconnection trunks or PRIs is VoIP traffic, it should so state. Rule 1.380 of the Florida Rules of Civil Procedure requires that an evasive or incomplete answer is to be treated as a failure to answer for the purposes of a Motion to Compel. Because the information provided by KMC is not responsive to Sprint's request, KMC should be ordered to provide a full and meaningful response to Sprint's Interrogatory No. 2 without delay, in accordance with the Discovery Rules.

24. In Interrogatory No. 3, Sprint has asked KMC to identify the names and addresses of carriers or other entities that send traffic to KMC for delivery by KMC over local interconnection trunks or PRI circuits to Sprint for termination. Specifically, Interrogatory No. 3 requests:

3. Please identify, and designate the amount of traffic applicable to each, the names and addresses of any ILEC, CLEC, IXC, or other telecommunications services provider, information services provider or enhanced services provider that has sent or is sending traffic to KMC that KMC delivers to Sprint over the local interconnection trunks or local PRI circuits identified above.

³ For the purposes of the Interrogatory, VoIP is defined to mean "real-time, multi-directional voice communication

This information is relevant to Sprint's claim that KMC knowingly delivered interexchange traffic that KMC received from other providers to Sprint for termination as local traffic. KMC requested clarification of this Interrogatory, which Sprint provided on January 3, 2005 (See Attachment F), however, no response based on that clarification has been provided.

25. In addition to several of the common objections discussed above, KMC objects to this Interrogatory because it does not specify information concerning only those carriers for which charge party numbers were changed "due to the tactics of KMC." However, Sprint is not required by the Discovery Rules to narrow its request in this manner. The names and addresses of all the carriers from whom KMC may receive traffic that it delivers to Sprint over local trunks are relevant to Sprint's ability to verify whether and to what extent KMC delivered interexchange traffic to Sprint in violation of the parties' interconnection agreements and the law. This information is especially relevant since KMC has alleged in its Motion to Dismiss that any alteration in the charge party number as observed by Sprint occurred prior to KMC receiving the traffic. (Motion to Dismiss at ¶¶ 2, 20) KMC's attempt to avoid answering this question by averring (although not under oath) that it only sends "end user traffic to Sprint over the local interconnection trunks" is conclusory and nonresponsive and is insufficient to allow Sprint to verify the accuracy of KMC claims. Rule 1.380 requires that an evasive and incomplete answer shall be treated as a failure to respond for the purposes of a Motion to Compel. Therefore, KMC should be ordered to respond fully and meaningfully to Sprint's Interrogatory No. 3, in accordance with the Discovery Rules, without delay.

26. Sprint's Interrogatory No. 4 (see also POD No. 1) asks KMC to identify and describe the contractual arrangements it has with carriers and other entities that terminate or exchange traffic with KMC. Specifically, Interrogatory No. 4 requests:

4. Please identify and describe the terms of any contractual agreement between KMC and any other ILEC, CLEC, IXC, or other telecommunications services provider, information services provider or enhanced services provider that terminates or exchanges traffic with KMC.

And POD No. 1 requests:

1. Please provide copies of all documents identified by you in your response to or otherwise relied on by you or related to your response to Interrogatory No. 4.

This information is relevant to Sprint's claims because it will enable Sprint to understand how KMC routinely receives and then delivers to Sprint the traffic that Sprint's records and Agilent studies show to be interexchange traffic originated by carriers other than KMC.

27. In addition to several of the common objections discussed above, KMC appears to believe that Sprint is required to limit its request to only those agreements that address the treatment of charge party number information. However, the rules of discovery do not require Sprint to limit its request in this manner. Information concerning the terms of KMC's agreements with other carriers, even those that KMC has not self-selected as being relevant to Sprint's claim, are likely to lead to the discovery of admissible evidence concerning how KMC receives traffic from these providers and then delivers it to Sprint.⁴

28. Notwithstanding its objections, KMC purports to respond to this request by providing a copy of a "template" agreement, which apparently addresses certain types of traffic

⁴ KMC has stated that its interconnection agreements with other Florida ILECs are publicly available through the Commission. However, in this Interrogatory Sprint has merely asked KMC to identify those agreements. As far as the corollary POD requests copies of KMC's publicly filed ILEC interconnection agreements, Sprint withdraws that request.

exchanged between KMC and other CLECs. However, KMC has not stated that the template represents an agreement that it has, in fact, entered into with other carriers or identified those carriers. KMC's purported response also doesn't address any agreements it might have with other carriers, such as IXCs. In addition, by its own admission, KMC provides services to enhanced service providers as end users, but has not responded as to whether it has entered in to agreements with any enhanced service providers to provide these "end user services" or what the terms of those agreements are, as Sprint has requested. Rule 1.380 requires that an evasive or incomplete answer shall be treated as a failure to respond for the purposes of a Motion to Compel. Therefore, KMC should be ordered to respond fully and meaningfully to Interrogatory No. 4, in accordance with the Discovery Rules, without delay, by identifying the agreements and describing the terms. Similarly, KMC should be compelled to provide or make available to Sprint for inspection the documents requested in related POD No. 1.

29. In Interrogatory No. 8, Sprint seeks clarification of KMC's implication in its Motion to Dismiss that a third party was responsible for any alteration in the charge party number alleged by Sprint in its Complaint. (Motion to Dismiss at ¶¶ 2, 15, 20) Specifically, Interrogatory No. 8 requests:

8. In KMC's Motion to Dismiss at ¶20 KMC states that "Thus, if such traffic was indeed masked upon termination, it was masked prior to delivery to KMC by a third party not presently named by Sprint in its Complaint." How would another provider obtain a nonworking KMC number and insert it into the Charge Party Number parameter in the SS7 signalling?

This information is relevant to Sprint's ability to support its claim that the charge party number was altered and that KMC had knowledge of this alteration.

30. KMC has objected to this Interrogatory on the grounds that it is ambiguous and makes unproven factual assumptions. Rule 1.340 (b) states that "an interrogatory that is otherwise

proper is not objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or calls for a conclusion or asks for information not within the personal knowledge of a party.” Interrogatory No. 8 does just that. Sprint believes that the question is clear and reasonably understood by KMC in that it relies on representations made by KMC in its Motion to Dismiss and attempts to clarify the meaning of those statements.

31. KMC purports to respond to the question despite its objection, by saying it delivers SS7 information “in accordance with industry standards and guidelines.” KMC does not identify the industry standards and guidelines it is referring to, but, in any event, that answer is not responsive to the question asked. In fact, Sprint seeks the requested information so that Sprint can evaluate for itself whether KMC complies with industry standards and guidelines related to the traffic KMC receives from other carriers and then delivers to Sprint. Rule 1.380 requires that an evasive or incomplete answer shall be treated as a failure to respond for the purposes of a Motion to Compel. Therefore, KMC should be ordered to respond fully and meaningfully to Sprint’s Interrogatory No. 8 without delay, in accordance with the Discovery Rules.

32. Sprint’s Interrogatory No. 9 attempts to ascertain how the same charge party number appeared on multiple calls delivered by KMC to Sprint for termination. Specifically, Interrogatory No. 9 requests:

9. Sprint has traced traffic from multiple IXC’s that KMC delivered to Sprint for termination. This traffic showed the same pseudo charge party number (as defined in footnote 9 of Sprint’s Complaint) identified on all these calls. How did the same KMC number appear as the charge party number on these calls from multiple providers?

This information is relevant to Sprint’s claim that KMC knowingly delivered interexchange traffic to Sprint over local interconnection trunks to avoid the payment of access charges.

33. In addition to several of the common objections discussed above, KMC has alleged that the question is vague because the term “pseudo charge party number” is not defined. This is inaccurate as Sprint defined the term “pseudo charge party number” in footnote 9 of its complaint and refers to that definition in the Interrogatory.⁵

34. KMC purports to provide an answer notwithstanding its objection; however, this answer completely fails to address the essence of the question, which is how the same charge party number appeared on multiple calls that KMC delivered to Sprint for termination. KMC should be ordered to answer the question as asked fully and meaningfully, without delay, in accordance with the Discovery Rules.

35. Sprint’s Interrogatory No. 11 (see also POD No. 4) asks KMC to explain its findings after reviewing the sample data provided to KMC by Sprint regarding the traffic that is the subject of this Complaint. Specifically, Interrogatory No. 9 requests:

11. What were KMC’s findings after reviewing sample data from Sprint as described in Sprint’s Complaint at ¶19? Please identify any documents, including but not limited to internal documents such as letters, emails, or analysis, relating to these findings.

And POD No. 4 requests:

4. Please provide copies of all documents identified by you in your response to or otherwise relied on by you or related to your response to Interrogatory No. 11.

KMC has responded that any relevant documents are privileged but has failed to identify those documents in a manner that would enable Sprint to determine the validity of the privilege, as

⁵ In footnote 9 of Sprint’s Complaint “pseudo charge party number” is defined as “a contrived number inserted into the SS7 signal for purposes of affecting the nature of the call in the switch record. In addition, Sprint defines the term “charge party number” for purposes of the Interrogatories to mean “the delivery of the calling party’s billing number in a signaling system 7 environment by a local exchange carrier to any interconnecting carrier for billing or routing purposes and the subsequent delivery of such number to end users.”

required by Rule 1.280. In accordance with the rule, KMC should be ordered to provide a detailed description of the documents it claims are privileged without delay, for Sprint's review.

36. In Interrogatory No. 17 (see also POD No. 7), Sprint asks KMC whether it knew that the enhanced service provider that it identified in its Motion to Dismiss was transporting interexchange traffic to KMC. Specifically, Interrogatory No. 17 requests:

- 17 (a) Did KMC know that the enhanced service provider identified by KMC in its Motion to Dismiss was transporting interexchange traffic to KMC?
- (b) If the answer is yes, at what point did KMC become aware that the enhanced service provider was transporting interexchange traffic to KMC?
- (c) Please identify any correspondence or other documents regarding any actions taken by KMC related to this interexchange traffic.

And POD No. 7 requests:

7. Please provide copies of all documents identified by you in your response to or otherwise relied on by you or related to your response to Interrogatory No. 17.

This information is relevant to Sprint's claim that KMC knowingly delivered interexchange traffic subject to access charges over local interconnection trunks to Sprint to avoid the payment of access charges.

37. Notwithstanding KMC's objections (which generally includes the common objections discussed above), KMC purports to provide an answer that utterly fails to respond to the question. Instead of responding as to whether KMC knew the traffic was interexchange traffic, KMC said "it had no reason to know." Rule 1.380 requires that an evasive or incomplete answer shall be treated as a failure to respond for the purposes of a Motion to Compel. Sprint's question is relevant and straightforward. KMC should be ordered to answer the question, as asked, fully and meaningfully, and provide any relevant documents, in accordance with the Discovery Rules, without delay.

38. In Interrogatory No. 20 (see also POD No. 10), Sprint asks KMC if any other carriers or entities transport interexchange traffic to KMC for termination to Sprint and, if so, Sprint requests that KMC explain the business relationships of these carriers or entities to KMC. Specifically, Interrogatory No. 20 requests:

20. To KMC's knowledge, do any ILECs, CLECs, IXCs, or other telecommunications services providers, information services providers or enhanced services providers (other than the enhanced service provider identified in KMC's Motion to Dismiss) transport interexchange traffic to KMC for termination to Sprint? If so, please provide full explanation of the business relationships with these carriers or other entities and identify supporting documentation.

And POD No. 10 requests:

10. Please provide copies of any and all documents identified by you in your response to or otherwise relied on by you or related to your response to Interrogatory No. 20.

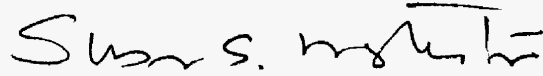
This information is relevant to Sprint's claims that KMC knowingly delivered interexchange traffic to Sprint over local interconnection trunks. It is especially relevant since KMC has deflected responsibility for any alteration of the charge party records for this traffic to other carriers. (Motion to Dismiss at ¶¶ 2, 15, 20)

39. In addition to asserting several of the common objections discussed above, KMC purports to answer the question, but completely fails to respond. Instead KMC cross-references other Interrogatories (Specifically Interrogatory Nos. 3 and 19 that are either equally unresponsive or not applicable. Rule 1.380 requires an evasive or incomplete answer shall be treated as a failure to respond for the purposes of a Motion to Compel. KMC should be ordered to answer this question, as asked, fully and meaningfully and provide any related documents as requested, without delay in accordance with the Discovery Rules.

Conclusion

As detailed above, KMC has failed to provide any answers to Sprint's Interrogatories under oath, as required by Rule 1.340 of the Discovery Rules. In addition, KMC has refused in any meaningful way to respond to the Interrogatory Nos. 2, 3, 4, 8, 9, 11, 17 and 20 and POD Nos. 1, 4, 7 and 10 as discussed in the body of this Motion. Three months have passed since the discovery requests were served and despite multiple attempts to resolve these issues, Sprint does not have yet information it seeks that is relevant and necessary to Sprint's prosecution of its Complaint. Sprint respectfully requests that the Commission grant this Motion to Compel as set forth herein and require KMC to provide complete responses to the discovery requests. Sprint also request the Commission to order KMC to provide affidavits to support its answers to the Interrogatories or, if the respondents are unable to attest to the truthfulness of the answers given, then to order KMC to respond fully and truthfully to these Interrogatories under oath, in accordance with the Discovery Rules. Sprint respectfully requests that the Commission require KMC to provide this information no later than one week from the issuance of the Commission's Order on this Motion to Compel.

Respectfully submitted this 15th day of February 2005



Susan S. Masterton, Esq.
1313 Blair Stone Road
P.O. Box 2214
Tallahassee, FL 32316-2214
(850) 599-1560 (phone)
(850) 878-0777 (fax)
susan.masterton@mail.sprint.com

and

Thomas A. Grimaldi, Esq.
6450 Sprint Parkway
Mailstop: KSOPHN0212-2A521
Overland Park, KS 66251
913-315-9148 (Phone)
913-523-9773 (Fax)
Thomas.a.grimaldi@mail.sprint.com

ATTORNEYS FOR SPRINT-FLORIDA,
INCORPORATED