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February 22, 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. 041144-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 KMC's Response to Sprint's Motion to Compel and KMC's Second Supplemental Discovery Responses 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.

Thank you for your assistance with this filing.

Sincerely yours,


Floyd R. Self

FRS/amb
Enclosures
cc: Parties of Record

DOCUMENT NUMBER - DATE

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC for alleged failure to pay intrastate access charges pursuant to its interconnection agreement and Sprint's tariffs and for alleged violation of Section 364.16(3)(a), F.S., by Sprint-Florida, Incorporated.

DOCKET NO. 041144-TP

Filed: February 22, 2005

**KMC's RESPONSE TO
SPRINT'S MOTION TO COMPEL AND
KMC's SECOND SUPPLEMENTAL DISCOVERY RESPONSES**

KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC ("KMC"), pursuant to Rule 28-106.204(1), through its undersigned counsel, hereby responds to the motion of Sprint-Florida, Incorporated to compel further responses to its discovery in this proceeding, and states as follows:

1. On November 15, 2004, Sprint served its First Set of Interrogatories and First Request for Production of Documents ("Sprint Discovery") on KMC in this docket.
2. KMC served objections and responses notwithstanding and subject to the Sprint Discovery on January 5, 2005, and supplemental responses on January 28, 2005. These objections speak for themselves about the deficiencies of the Sprint discovery requests, and KMC continues to stand behind them.
3. Without addressing the considerable bombast within Sprint's motion, KMC hereby focuses on the specific points raised by the Sprint Motion and, as necessary, supplements its answers, as follows:
4. Paragraphs 9-12 of the Sprint Motion, Affidavits. Attached hereto as Exhibit A are the affidavits of Timothy Pasonski, Gary Simerly, and Marva Brown Johnson. As is

indicated in the affidavit of Ms. Johnson, Ms. Johnson has adopted the response of Mr. Falvella who is no longer with KMC. KMC shall separately file the appropriate affidavits for the Supplemental Responses contained herein

5. Paragraphs 20-23, Interrogatory No. 2. As KMC indicated in its January 2, 2005, response, KMC does not exchange any traffic with Sprint over PRIs, so there is no further information to provide with respect to PRIs. With respect to the local interconnection trunks between Sprint and KMC in Tallahassee and Ft. Myers, KMC has not terminated over such local interconnection trunks any VoIP traffic that originates on the KMC network because KMC does not originate, nor has it ever originated, any VoIP traffic. With respect to these same Sprint-KMC local interconnection trunks and traffic that does not originate on the KMC network, except as with respect to the confidential customer identified in KMC's motion to dismiss (hereinafter "Company X"), as KMC explained in its January 5, 2005, response, KMC has no reason or basis to know, and does not know, whether traffic it does not originate, and which it receives from others, is VoIP traffic. With respect to Company X, and the traffic that KMC terminated to Sprint over the Sprint-KMC local interconnection trunks, this traffic came to KMC over PRIs that were flat-rated PRIs, subject to an additional charge if certain minute-of-use thresholds were exceeded. Specifically, under the flat-rate charges, there was a cap of 400,000 minutes of use per billing month on both the Tallahassee PRIs and the Ft. Myers PRIs. These threshold levels were never exceeded for any month, so there was no reason for KMC to maintain the number of minutes of traffic carried over these PRIs. Company X ordered 12 PRIs for the Tallahassee market and 15 PRIs for the Ft. Myers market. KMC did not maintain the number of messages it received over these PRIs. As previously reported to Sprint, the PRIs ordered by Company X were in effect approximately from July 2002 through May 2004; in

approximately May 2004 these PRIs were terminated, and no further Company X traffic was sent to Sprint over the Sprint-KMC local interconnection trunks.

6. Paragraphs 24-25, Interrogatory No. 3. As KMC indicated in its January 2, 2005, response to Interrogatory No. 3, KMC does not exchange any traffic with Sprint over PRIs, so there is no further information to provide with respect to PRIs. With respect to the local interconnection trunks between Sprint and KMC in Tallahassee and Ft. Myers, other than Company X, KMC does not and did not send to Sprint any third party traffic (ILEC, CLEC, IXC, or other telecommunications service provider, information services provider or enhanced services provider). With respect to the traffic sent to Sprint over the Sprint-KMC local interconnection trunks in Tallahassee and Ft. Myers, see the information in Paragraph 5 above.

7. Paragraphs 26-28, Interrogatory No. 4 and POD No. 1. Sprint has agreed in its clarifications dated January 3, 2005, that KMC need not answer with respect to markets outside of Florida. (See Exhibit F to Sprint Motion). KMC stands by its objections to the extent that Sprint is seeking information for Florida markets other than Tallahassee and Ft. Myers, as these are the only two markets in Florida where KMC and Sprint exchange traffic. Markets outside of the Sprint service areas in Florida, or outside of the markets where Sprint and KMC exchange traffic in Florida, simply are not and cannot be relevant to these proceedings or lead to the discovery of admissible evidence with respect to the subject of Sprint's Complaint. With respect to the Tallahassee and Ft. Myers markets, KMC has a switched access arrangement with several IXCs that purport to cover the entire State of Florida, and KMC will provide copies of such agreements, pursuant to the nondisclosure agreement between Sprint and KMC, once KMC has notified these IXCs as required under those agreements. KMC also has executed mutual traffic exchange ("MTE") agreements with several CLECs that operate in Florida, but KMC does not

and has not directly exchanged terminating traffic with any of these CLECs in the Tallahassee or Fort Myers areas. With respect to Company X, KMC has already provided to Sprint all of the documentation with respect to any agreements with Company X. As previously stated in KMC's January 5, 2005, response to Sprint, the template agreement that Sprint complains of in Paragraph 28 of its Motion was provided to Company X in anticipation of executing a written Master Services Agreement, but such template agreement, nor any other revised, updated, amended, or alternative agreement, was ever executed with Company X. Further, at the time the original service orders were executed, it was contemplated that Company X would execute a Master Services Agreement and related product attachments, but no such agreements were ever executed. It was Company X's failure to execute a Master Service Agreement with KMC that, in part, led to the termination of services to Company X.

8. Paragraphs 29-31, Interrogatory No. 8. As KMC has indicated in both its January 5, 2005, responses and the January 28, 2005, supplemental responses, at no time did KMC change any Calling Party Number information or Charge Party Number information present in any SS7 record for any call.

As is demonstrated on the CDR information Sprint sent to KMC, the Calling Party Number information appeared on every call, and, to the best of KMC's knowledge, it reflected the originating party's telephone number. KMC simply passed the information it received in this field on to Sprint unaltered. Thus, had Sprint chosen to look at the SS7 record Calling Party Number information field, it would have known the origin of each and every call sent to Sprint. Notably, when Sprint first contacted KMC regarding the traffic at issue, Sprint indicated that the issue was the alteration of the Calling Party Number information. See the November 6, 2003, demand letter from Mr. William Cheek to Mr. Larry Salter, attached to the Sprint Complaint as

Attachment # 5. Sprint apparently realized, subsequent to Mr. Cheek's letter, that the Calling Party Number was present in the SS7 information associated with every call KMC sent to Sprint because when Sprint filed its Complaint, the focus of Sprint's claims had changed from the Calling Party Number to an allegation that KMC altered the Charged Party Number information. See, for example, Paragraphs 12-15, of the Sprint Complaint.

With respect to the Charge Party Number information, the SS7 standards and Lucent technical reference provided on January 5, 2005, in response to Interrogatory No. 1 require that the Billing Telephone Number for the PRIs that KMC provided to Customer X (see Paragraph 5 above) is the telephone number that the SS7 network uses to populate the Charge Party Number field. For the PRIs, there is a telephone number associated with each circuit, but there is a Billing Telephone Number that is associated with the entire PRI group, and this number is inserted into the Charge Party Number field and which is used by KMC to bill its customer for the entire trunk group. (See Paragraph 5 above, explaining that there was to be an additional charge to Customer X for the PRIs in the event the minutes of use exceeded certain thresholds, which Customer X did not exceed.) To the best of KMC's knowledge, prior to KMC's Lucent 5ESS switch populating the Charge Party Number field in the SS7 signaling information to reflect the Billing Telephone Number of the PRIs, the Charge Party Number field was empty. With respect to Company X, the two Charge Party Numbers Sprint has identified as being the "pseudo-charge party numbers" were the respective Billing Telephone Number for the entire Tallahassee PRI group of Company X and the Billing Telephone Number for the entire Ft. Myers PRI group of Company X.

In view of these facts, KMC's association of the Billing Telephone Number to the PRIs of Company X was entirely consistent with how Sprint described the network should operate in

Paragraph 12 of its Complaint – “Generally the calling party number and the charge party number should be the same. However, there are times when they would differ for legitimate reasons, such as when a PBX is used.” PBXs are commonly connected via PRIs, just as Company X’s equipment was connected via PRIs. KMC connected Company X via PRIs and routed Company X’s traffic to Sprint over the Sprint-KMC local interconnection trunks because it was KMC’s understanding that the Company X traffic was enhanced services traffic exempt from access charges. The interexchange telecommunication traffic KMC delivers to Sprint is and was properly delivered to Sprint over separate access trunks.

The fact that Sprint chose to use the Charge Party Number and ignore the Calling Party Number in assessing the nature of these calls is a business decision on Sprint’s part for which there is no fault or wrongdoing by KMC. As KMC has said, at no time did KMC manipulate, mask, insert “pseudo-charge party numbers,” or otherwise change any signaling information that was passed to Sprint. For the calls KMC delivered to Sprint over the local interconnection trunks in Tallahassee and Ft. Myers which came to KMC over the PRIs that Company X obtained from KMC, the SS7 record fields for the Charge Party Number were correctly populated with the Billing Telephone Number of the PRIs ordered by Customer X.

9. Paragraphs 32-34, Interrogatory No. 9. KMC stands by its January 5, 2005, response to Interrogatory No. 9 as further supplemented by the information in the supplemental response to Interrogatory No. 8 in Paragraph 8 above.

10. Paragraph 35, Interrogatory No. 11, and POD No. 4. KMC stands by its January 5, 2005, objections and responses to Interrogatory No. 11 and POD No. 4. However, KMC recognizes that it should have provided the privilege log, and that it is in the process of compiling a privilege log which will be provided to Sprint by March 2, 2005. KMC further adds,

as supplementation to its prior responses, that the AMA records created by the KMC switch did not capture the Calling Party Number information in the SS7 record for each call, but only the Charge Party Number information, which reflected the Billing Telephone Number associated with Customer X's PRIs. KMC's AMA recordings were used solely for the purposes of KMC billing KMC's customers, such as Customer X, and were never shared with or transmitted to Sprint. KMC's AMA recordings did not capture the Calling Party Number information because KMC had no relationship with, nor any need to know, the calling party in order to bill Customer X. KMC's AMA records captured the Charge Party Number information, which was the Billing Telephone Number, because KMC needed to bill Company X for the PRIs it obtained from KMC if, as explained in Paragraph 5 above, the utilization of the PRIs exceeded certainly monthly thresholds. When Sprint gave to KMC its 4-hour sample data, and KMC saw the two Charge Party Numbers, there was no need to further analyze the data as the two Charge Party Numbers were the Billing Telephone Numbers associated with the PRIs ordered by Company X. Once the calls in the Sprint sample were identified as associated with the Company X PRIs, any ensuing "investigation" involved communications between KMC counsel and KMC employees to ascertain the business relationship between KMC and to otherwise prepare KMC's defenses to Sprint's claims.


11. Paragraphs 36-37, Interrogatory No. 17, and POD No. 7. KMC believes that its prior answers adequately responded to this interrogatory and POD. However, if it helps, KMC will further respond to Interrogatory 17(a) as follows: No. Company X identified itself as an enhanced services provider. Under well-established FCC rules and policy enhanced services provider traffic is not subject to access charges. KMC provided the PRIs to Company X and, as previously addressed in Paragraph 10 above, KMC's AMA record did not capture the Calling

Party Number information from the SS7 records since there was no business need to capture that data. The AMA records captured only the information potentially needed for billing purposes. By not capturing the Calling Party Number information, KMC had no reason to know whether the traffic was interexchange traffic. The supplemental response to 17(b) is: Not applicable. The supplemental response to 17(c) is: Not applicable.

12. Paragraphs 38-39, Interrogatory No. 20, and POD No. 10. KMC believes that its prior answers adequately responded to this interrogatory and POD. However, if it helps, KMC will further respond to Interrogatory 20 as follows: No. For further elaboration on this question, please see the information in Paragraphs 6 and 7 above.

WHEREFORE, KMC respectfully requests that Sprint's Motion to Compel be denied. In the alternative, KMC requests that the Commission find that the supplemental responses provided above moot Sprint's instant Motion to Compel.

RESPECTFULLY SUBMITTED this 22nd day of February, 2005,



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CERTIFICATE OF SERVICE

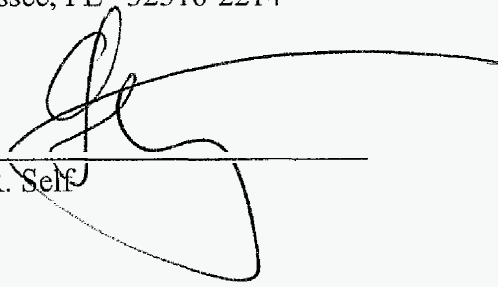
I HEREBY CERTIFY that true and correct copies of the foregoing have been served upon the following parties by hand delivery (*), electronic mail (***) and/or U.S. Mail this 22nd day of February, 2005.

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