

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DIRECT TESTIMONY OF**

3 **JAMES R. BURT**

4 **DOCKET NO. 041144-TP**

5

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

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

9

10 **Q. By whom are you employed and in what capacity?**

11 **A.** I am presently employed as Director - Regulatory Policy for Sprint Corporation. I am
12 testifying in this proceeding on behalf of Sprint-Florida, Incorporated.

13

14 **Q. Please provide your educational and work background.**

15 **A.** I received a Bachelor of Science degree in Electronics Engineering from the University of
16 South Dakota in 1980 and a Masters in Business Administration from Rockhurst College
17 in 1989.

18

19 I became Director – Regulatory Policy in February of 2001. I am responsible for
20 developing state and federal regulatory policy and legislative policy for Sprint
21 Corporation, including the coordination of regulatory and legislative policies across the
22 various Sprint business units and the advocacy of such policies before regulatory and
23 legislative bodies.

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1 From 1997 to February of 2001, I was Director-Local Market Planning. I was responsible
2 for policy and regulatory position development and advocacy from a CLEC perspective.
3 In addition I supported Interconnection Agreement negotiations and had responsibility for
4 various other regulatory issues pertaining to Sprint's CLEC efforts.

5
6 From 1996 to 1997, I was Local Market Director responsible for Sprint's Interconnection
7 Agreement negotiations with BellSouth.

8
9 I was Director – Carrier Markets for Sprint's Local Telecom Division from 1994 to 1996.
10 My responsibilities included interexchange carrier account management and management
11 of one of Sprint's Interexchange Carrier service centers.

12
13 From 1991 to 1994, I was General Manager of United Telephone Long Distance, a long
14 distance subsidiary of Sprint/United Telephone Company. I had P&L, marketing and
15 operations responsibilities.

16
17 From 1989 to 1991, I held the position of Network Sales Manager responsible for sales of
18 business data and network solutions within Sprint's Local Telecom Division.

19
20 From 1988 to 1989, I functioned as the Product Manager for data and network services
21 also for Sprint's Local Telecom Division.

22
23 Prior to Sprint I worked for Ericsson Inc. for eight years with positions in both engineering
24 and marketing.

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

2 **A.** Sprint filed a complaint against KMC for failure to pay intrastate access charges pursuant
3 to its interconnection agreement with Sprint and Sprint's tariffs and for violating Section
4 364.16(3)(a) of the Florida Statutes. My testimony will address issues number 1, 3, 4 (in
5 part), 5 (in part), 6, 7 (in part), 8, and 9. Sprint's witness Schaffer will address Issue 2.
6 Sprint witness Wiley will also address, in part, Issues 4, 5 and 8. Sprint's witness Farnan
7 will address, in part, Issues 5, 7 and 8. Finally, Sprint's witness Danforth will address
8 Issues 10 and 11.

9

10 **Issue 1: What is the Florida Public Service Commission's jurisdiction to address all or part**
11 **of this complaint?**

12

13 **Q. Which Florida Statutes give the Florida Public Service Commission jurisdiction to**
14 **address all or part of this complaint?**

15 **A.** Florida Statutes 364.01, 364.16, 364.162 and 364.163 give the Florida Public Service
16 Commission jurisdiction over this complaint. Chapter 364 of the Florida Statutes applies
17 to Telecommunications Companies. Sprint is a certified Local Exchange Company within
18 the State of Florida and to the best of my knowledge, KMC is a certified competitive local
19 exchange company (CLEC) and a registered intrastate interexchange carrier in Florida.
20 The following provisions of Chapter 364, Florida Statutes apply to the Complaint:

21 364.01(1) "The Florida Public Service Commission shall exercise over and
22 in relation to telecommunications companies the powers conferred by this
23 chapter."

1 364.16(3)(a) "No local exchange telecommunications company or
2 competitive local exchange telecommunications company shall knowingly
3 deliver traffic, for which terminating access service charges would
4 otherwise apply, through a local interconnection arrangement without
5 paying the appropriate charges for such terminating access service."

6 364.162(1) "The commission shall have the authority to arbitrate any
7 dispute regarding interpretation of interconnection or resale prices and
8 terms and conditions."

9 364.163 "Each local exchange company subject to 364.051 shall maintain
10 tariffs with the commission containing the terms, conditions, and rates for
11 each of its network access services.

12
13 **Q. Does the Communications Act give the Florida Public Service Commission**
14 **jurisdiction over all or part of this complaint?**

15
16 **A.** Yes. Sections 152, 251 and 252 of the Communications Act of 1934 as amended (47
17 U.S.C. §§151 et. seq.) give the Florida Public Service Commission jurisdiction over all or
18 part of this complaint as follows:

19 Section 152(b) "Except as provided in sections 223 through 227, inclusive,
20 and section 332, and subject to the provisions of section 301 and title VI,
21 nothing in this Act shall be construed to apply or to give the Commission
22 [FCC] jurisdiction with respect to (1) charges, classifications, practices,

1 services, facilities, or regulations for or in connection with intrastate
2 communications service by wire or radio of any carrier,”

3
4 Section 251(d)(3) “Preservation of State Access Regulations. In prescribing
5 and enforcing regulations to implement the requirements of this section, the
6 Commission shall not preclude the enforcement of any regulation, order, or
7 policy of a State commission that (A) establishes access and interconnection
8 obligations of local exchange carriers; (B) is consistent with the
9 requirements of this section; and (C) does not substantially prevent
10 implementation of the requirements of this section and the purposes of this
11 part.”

12
13 Section 252 authorizes the Commission to approve interconnection
14 agreements pursuant to 251 that are entered into through negotiation or
15 arbitration. The authority has been interpreted by the courts and this
16 Commission to include enforcement authority to resolve interconnection
17 agreement disputes. See, for example, Order Nos. PSC-04-0824-PAA-TP,
18 in Docket No. 040488-TP, *In re: Complaint of BellSouth*
19 *Telecommunications, Inc. against IDS Telecom LLC to enforce*
20 *interconnection agreement deposit requirements*, in which the Commission
21 cited to *BellSouth Telecommunications, Inc. v. MCI Metro Access*
22 *Transmission Services, Inc.*, 317 F.3d 1270 (11th Cir. 2003) to support its
23 authority to interpret and enforce interconnection agreements.

1 **Q. Do the Dispute Resolution terms of the Interconnection Agreements between Sprint**
2 **and KMC give the Florida Public Service Commission jurisdiction over disputes**
3 **between the parties?**

4 **A.** Yes. For the period of time covered by this Complaint, Sprint and KMC had two different
5 Interconnection Agreements in place, the 1997 MCI Agreement and FDN Agreement. In
6 addition, KMC is in the process of finalizing adoption a third contract that, if approved,
7 will also be in effect for the period of time covered by this Complaint. A brief summary of
8 the contracts and their effective dates is as follows:

9
10 1997 MCI Agreement – September 13, 2000 through June 19, 2003

11 FDN Agreement – June 20, 2003 through June 13, 2004

12 2002 MCI Agreement – June 14, 2004 to present

13 The Dispute Resolution section of the contracts gives the Florida Public Service
14 Commission jurisdiction over disputes between Sprint and KMC. The language in all of
15 the contracts is essentially the same and provided below. The 1997 MCI Agreement, the
16 FDN Agreement and the 2002 MCI Agreement all define “Commission” as the Florida
17 Public Service Commission.

18 1997 MCI Agreement, Part B General Terms and Conditions, Section 23.1:

19 “The Parties recognize and agree that the Commission has continuing
20 jurisdiction to implement and enforce all terms and conditions of this
21 Agreement....”

22
23 FDN Agreement, Part A, Section 23: “The Parties recognize and agree that

1 the Commission has continuing jurisdiction to implement and enforce all
2 terms and conditions of this Agreement....”

3
4 2002 MCI Agreement, Part A, Section 23: “The Parties recognize and
5 agree that the Commission has continuing jurisdiction to implement and
6 enforce all terms and conditions of this Agreement....”

7
8 **Issue 3: Under the Interconnection Agreements with KMC or Sprint’s tariffs, is Sprint**
9 **required to conduct an audit as a condition precedent to bringing its claims against KMC or**
10 **for KMC to be found liable?**

11
12 **Q. Do the applicable Interconnection Agreements between Sprint and KMC or**
13 **applicable Sprint tariffs require an audit prior to a complaint being filed?**

14 **A.** No. There is no language in the Interconnection Agreements applicable between Sprint
15 and KMC that states that an audit must be performed prior to a complaint being filed.
16 And, there is no language in Sprint’s Access Services Tariff requiring an audit. The
17 applicable interconnection agreements are the 1997 MCI Agreement, the FDN Agreement
18 and the 2002 MCI Agreement. In KMC’s Motion to Dismiss Sprint’s Complaint, filed
19 October 15, 2004, KMC alleges that cites Part A, Section 22.1 and Attachment IV, Section
20 8.2 of the 1997 MCI interconnection agreement require an audit before pursuing a
21 complaint. Section 22.1 allows audits but does not require them. Specifically the
22 applicable language is “The auditing Party may perform up to two (2) Audits per twelve
23 (12) month period” With regard to the issues in this proceeding Section 8.2 addresses

1 the responsibilities of the Parties with regarding usage reports. Section 8.2 specifically
2 states “Either Party may request an audit of such usage reports on no fewer than ten (10)
3 day’s” Thus, there is no language in the 1997 MCI Agreement requiring an audit; both
4 sections allow audits and detail the rights and limitations associated with such audits.

5
6 Similarly, the FDN agreement allows but does not require an audit. Section 7.1
7 specifically states “Subject to each Party’ reasonable security requirements and except as
8 may be otherwise specifically provided in this Agreement, either Party, at its own expense,
9 may audit the other Party’s books,.....” Again, it is an option, not a requirement.

10
11 And, Sprint’s Access Service Tariff, Section E2.3.11.D.1 (cited by KMC in its Motion to
12 Dismiss as requiring an audit), allows an audit by the Company but does not require an
13 audit. Sprint does not believe the cited tariff provision is applicable to this complaint, as it
14 addresses the misreporting of PIUs for traffic that is properly routed over access trunks,
15 while this complaint involves the wrongful termination of access traffic over local
16 interconnection trunks. However, even if Section E2.3.11.D.1 applies, it does not require
17 an audit. The specific language E2.3.11.D.1 states “...when a billing dispute arises or
18 when a regulatory commission questions the reported PIU, the Company may, upon
19 written request, require the customer to provide call detail records which will be audited to
20” Thus, neither the Interconnection Agreements nor the Access Services Tariffs
21 “require” an audit.

22
23 **Issue 4: What is the appropriate method to determine the jurisdictional nature and**

1 **compensation of traffic?**

2

3 **Q. How is the jurisdiction, local, intrastate toll or interstate toll, determined?**

4 **A.** It is common industry practice to determine jurisdiction based on the originating and
5 terminating end points of the calling parties. If the originating and terminating end points
6 are within the same local calling area, the jurisdiction of the call is local. If the originating
7 and terminating end points are within the state, but outside the local calling area, the
8 jurisdiction is intrastate toll. If the originating and terminating end points are in different
9 states, the jurisdiction is interstate toll. This “end-to-end” analysis was confirmed as
10 recently as February 23, 2005 by the FCC. In its recently issued Order in WC Docket No.
11 03-133, *In the Matter of AT&T Petition for Declaratory Ruling Regarding Enhanced*
12 *Prepaid Calling Card Services*, CC Docket No. 03-133, at page 5, the FCC states:

13

14 “For purposes of determining the jurisdiction of calling card calls, the
15 Commission has applied an “end-to-end” analysis, classifying long distance
16 calls as jurisdictionally interstate or intrastate based on the endpoints, not
17 the actual path, of each complete communication. Under the Commission’s
18 end-to-end analysis, intrastate access charges apply when customers use
19 prepaid calling cards to make interexchange calls that originate and
20 terminate with the same state, even if the centralized switching platform is
21 located in a different one.”

22

23 **Q. Can the jurisdiction of traffic between the calling parties be changed by routing the**

1 **call in a particular manner?**

2 **A.** No. The FCC Order referenced above, WC Docket No. 03-133, also stated that the
3 routing of a call does not change the jurisdiction. In other words, the jurisdiction of a call
4 is determined by the end points of the calling parties regardless of how the call is routed.
5 The FCC affirmed the same principle in its order on a AT&T's Petition for a Declaratory
6 Ruling that traffic that originates and terminates on the public switched network, but is
7 routed through internet protocol during portion of the transmission is an information
8 service rather than a telecommunications service. The FCC rejected AT&T's position,
9 finding that AT&T's routing of this traffic through its internet backbone does not change
10 the nature of the traffic from a telecommunications service to an information service. *In the*
11 *Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony*
12 *Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97, adopted
13 April 14 2004, released April 21, 2004.

14
15 **Q. Do the Interconnection Agreements between Sprint and KMC define local traffic?**

16 **A.** There are three Interconnection Agreements applicable to this complaint, the 1997 MCI
17 Agreement, the FDN Agreement and the 2002 MCI Agreement. All three of these
18 agreements define local traffic in a similar manner.

19
20 Part B – Definitions of the 1997 MCI Agreement defines local traffic as follows.

21 "LOCAL TRAFFIC" means traffic that is originated and terminated within a given local
22 calling area, or Expanded Area Service ("EAS") area, as defined by state Commissions or,
23 if not defined by State Commissions, then as defined in existing Sprint tariffs."

1 Part A – Definitions, Section 1.49 of the FDN Agreement defines local traffic as follows.

2 “‘Local Traffic,’ for the purposes of this Agreement the Parties shall agree that “Local
3 Traffic” means traffic (excluding CMRS traffic) that is originated and terminated within
4 Sprint’s local calling area, or mandatory expanded area service (EAS) area, as defined by
5 State commissions or, if not defined by State commissions, then as defined in existing
6 Sprint tariffs. For this purpose, Local Traffic does not include any Information Access
7 Traffic. Neither Party waives its’ rights to participate and fully present its’ respective
8 positions in any proceeding dealing with the compensation for Internet traffic.”

9
10 Part B – Definitions, of the 2002 MCI Agreement defines local traffic as follows.

11
12 “‘LOCAL TRAFFIC’, for purposed of reciprocal compensation, means any telephone call
13 that originates in one exchange and terminates in either the same exchange, or other local
14 calling area associated with the originating exchange (e.g., Extended Area Service) as
15 defined and specified in Section A3 of Sprint’s General Subscriber Service Tariff. The
16 applicability or inapplicability of this definition to any traffic does not affect either Party’s
17 right to define its own local calling areas for the purpose of charging its customers to
18 originate calls.”

19
20 **Q. Do Sprint’s Access Service Tariffs address how the jurisdictional nature of traffic is**
21 **determined?**

22 **A.** Yes. The Sprint Access Service Tariffs address how the jurisdictional nature of traffic is
23 determined in section E 2.3.11(A)(1).

1 Section E 2.3.11(A)(1) Pursuant to Federal Communications Commission
2 order F.C.C. 85-145 adopted April 16, 1985, intrastate usage is to be
3 developed as though every call that enters a customer *network from a*
4 *calling location* within the same state as that in which the called station (as
5 designated by the called station number) is situated is an intrastate
6 communication and every call for which the point of entry is in a state other
7 than that where the called station (as designated by the called station
8 number) is situated is an interstate communication. *The manner in which a*
9 *call is routed through the telecommunications network does not affect the*
10 *jurisdiction of a call, i.e.; a call between two points within the same state is*
11 *an intrastate communication even if the call is routed through another state.*
12

13 **Issue 5: Did KMC knowingly deliver interexchange traffic to Sprint over local**
14 **interconnection trunks in violation of Section 364.16(3)(a), Florida Statutes? If yes, what is**
15 **the appropriate compensation and amount, if any, due to Sprint for such traffic?**
16

17 **Q. Does your testimony address all aspects of Issue 5?**

18 **A.** No. My testimony addresses generally the appropriate compensation due to Sprint for the
19 interexchange traffic KMC delivered to Sprint over local interconnection trunks from a
20 policy perspective. In addition, my testimony addresses the basis of Sprint's allegations
21 that KMC knew that the traffic is was delivering to Sprint over local interconnection trunks
22 was, in fact, interexchange traffic. Sprint's witness William L. Wiley will address the
23 studies Sprint and Agilent conducted using SS7 records to support Sprint's allegations that

1 KMC knowingly delivered interexchange traffic over local interconnection trunks in
2 violation of the statute. Sprint's witness Kenneth A. Farnan will address the amount of
3 compensation that is due Sprint for this traffic.

4
5 **Q. What is Sprint's position on the appropriate inter-carrier compensation for local,**
6 **intrastate toll and interstate toll traffic?**

7 **A.** It is Sprint's position that the inter-carrier compensation for all traffic that terminates to
8 Sprint's network be based on the jurisdictional nature of the traffic using the end to end
9 analysis. Local traffic should be subject to reciprocal compensation rates, intrastate toll
10 traffic should be subject to intrastate access rates and interstate toll traffic should be subject
11 to interstate access rates.

12
13 **Q. Do the terms and conditions in the Sprint's interconnection agreements with KMC**
14 **reflect Sprint's position regarding the appropriate inter-carrier compensation for**
15 **traffic falling into the different jurisdictions as you've described them above?**

16 **A.** Yes. As I stated above, local traffic is specifically and clearly defined in all three
17 Interconnection Agreements that were in effect. Compensation for toll traffic (sometimes
18 referred to as interexchange traffic) is also specifically delineated. Attachment 1, Section
19 4.2 of the 1997 and 2002 MCI Agreement and Section 37.2 and FDN Agreement includes
20 the following language.

21
22 "Compensation for the termination of toll traffic and the origination of 800
23 traffic between the interconnecting parties shall be based on the applicable

1 access charges in accordance with FCC and Commission rules and
2 regulations,....”

3
4 **Q. What is the basis of the Sprint’s allegations that KMC knew that traffic that it**
5 **delivered to Sprint over local interconnection trunks was really interexchange traffic**
6 **for which access charges should have been paid, rather than local traffic.**

7 **A.** It is suspect that a carrier could hand-off substantial amounts of traffic, especially
8 preponderantly intrastate toll traffic, which is bound for Sprint end users, through KMC
9 without KMC knowing it would be more efficient for the carrier to directly interconnect
10 with Sprint. Clearly it is illogical, unless there is a financial incentive, for KMC’s carrier
11 customer to route large volumes of traffic through KMC to get to Sprint end user
12 customers. And, instead of using standard network switch to switch interconnection
13 trunks, the carrier orders PRI service from KMC which conveniently changes the called
14 party number to a local PRI number, which makes the call record appear local. Further,
15 KMC proactively programmed the PRI’s to default to the local PRI number rather than
16 retaining the originating calling party number in the call detail record. Lucent’s “5ESS
17 Switch ISDN Feature Descriptions”, Document No. 235-190-104, Issue 6.00F, Section
18 22.1.1 addresses this programming option. The specific language is:

19
20 “The existing Calling Party Number Billing on Primary Rate Interface (99-
21 5E-2467) feature provides the individual calling party number (CPN) billing
22 on originating primary rate interface (PRI) calls rather than billing based on
23 the Directory Number (DN) assigned to the PRI.The CPN is

1 substituted for the billing number for all calls, rather than requiring the CPN
2 to pass regular screening before it can be used as the billing number in the
3 AMA record. This feature applies when screening is unnecessary or when
4 screening takes place external to the 5ESS® switch”
5

6 The fact that KMC includes language in its service contracts that appears to be intended to
7 shift the liability for the payment of access charges for this type of traffic to its customers,
8 would further suggest that KMC knows that certain arrangements likely involve passing
9 toll traffic, for which access charges are applicable, over local interconnection facilities to
10 Sprint. And, there is a financial benefit to KMC to pass access traffic as local because it
11 increases Sprint’s compensation to KMC. See Mr. Mitch Danforth’s testimony on this
12 subject. Also, KMC is able to realize a financial benefit by selling services to carriers that
13 otherwise could more efficiently deliver the traffic directly to Sprint.
14

15 KMC’s actions to “cover its tracks” after the FCC issued its order in the AT&T
16 Declaratory Ruling proceeding, as further discussed below, also suggest that KMC was
17 aware that the traffic it was receiving from a self-described enhanced service provider over
18 PRI trunks, and then delivering over its local interconnection trunks to Sprint for
19 termination was, indeed, interexchange traffic based on the end points of the call. Given
20 that the FCC had already addressed the issue of whether this type VoIP traffic was
21 Enhanced Service traffic in 1998, KMC by all its actions must have known that the traffic
22 being passed to it by its customer was subject to access charges without having to wait for
23 the AT&T decision to discontinue delivering traffic it never should have started to deliver

1 over local interconnection trunks. The FCC in CC Docket No. 96-45, Report to Congress,
2 in paragraph 89 stated:

3
4 “ Thus, the record currently before us suggests that this type of IP telephony
5 lacks the characteristics that would render them ‘information services’
6 within the meaning of the statute, and instead bear the characteristics of
7 ‘telecommunications services.’ ”

8
9 **Q. Does Sprint’s research indicate active participation by KMC in the routing of the**
10 **interexchange traffic that is the subject of Sprint’s Complaint to Sprint over local**
11 **interconnection trunks in a manner that made the traffic appear to be local to**
12 **Sprint?**

13 **A.** Yes, as further discussed in Mr. Wiley’s testimony, Sprint’s research, including the Agilent
14 study of relevant SS7 information and Sprint’s own studies of SS7 information related call
15 records indicate that KMC was a knowing participant in the delivery and routing of this
16 interexchange traffic in a manner that made it appear local to Sprint.

17
18 **Issue 6: Was any of the traffic that is the subject of Sprint’s complaint enhanced services**
19 **traffic? If yes, how is enhanced services traffic delivered to Sprint from KMC to be treated**
20 **under the Interconnection Agreements, Sprint’s tariffs, and applicable law?**

21
22 **Q. Does Sprint know whether the traffic KMC delivered to Sprint over local**
23 **interconnection trunks is enhanced services traffic?**

1 A. No. Sprint has no way of distinguishing enhanced services traffic from any other voice
2 traffic it received over the local interconnection trunks between Sprint and KMC. The
3 traffic appeared and was treated like any other traffic terminated to Sprint by KMC over
4 these local interconnection facilities.

5
6 **Q. Does the fact that KMC claims that the traffic it delivers to Sprint over local**
7 **interconnection trunks is enhanced services traffic change Sprint's position on what**
8 **the appropriate inter-carrier compensation should apply to the traffic?**

9 A. No. Sprint has no evidence that the traffic is truly enhanced services traffic. Sprint studied
10 call records derived from SS7 information for calls originated by Sprint end users (and end
11 users of other local exchange companies) which indicated that the calls originated on
12 standard access lines, were then routed to IXCs and ultimately entered Sprint's network for
13 local termination to Sprint end users over KMC's local interconnection trunks with Sprint.
14 Based on this SS7 information and associated call records these calls appear to be
15 interexchange voice calls. The testimony of Sprint's witness William L. Wiley discusses
16 this SS7 information and the associated call records in more detail.

17
18 **Q. If Sprint does not know whether the traffic is enhanced service traffic, why is this an**
19 **issue in the Complaint?**

20 A. In its Motion to Dismiss and in its Responses to Sprint's First Set of Interrogatories and
21 First Request for Production of Documents, KMC stated that the traffic at issue in this
22 Complaint is traffic delivered by an self-described enhanced service provider to KMC over
23 PRIs the provider purchased from KMC. In addition, in correspondence between KMC and

1 the self-described enhanced service provider, and in public comments filed by the self-
2 described enhanced service provider with the FCC, the self-described enhanced service
3 provider represents itself as a Voice over Internet Protocol (VoIP) service provider.
4

5 **Q. If KMC demonstrated that the traffic routed to KMC by the self-described enhanced**
6 **services provider and delivered to Sprint over KMC's local interconnection trunks for**
7 **termination by Sprint to Sprint end users was routed in part over internet protocol**
8 **would that change Sprint's position on the appropriate inter-carrier compensation**
9 **that should apply to the traffic?**

10 **A.** No. Even if the calls were routed over internet protocol at some point between an IXC's
11 network and KMC's network, Sprint's position would be that the jurisdictionally
12 appropriate inter-carrier compensation would apply. As stated above, the Interconnection
13 Agreements that were in effect and Sprint's Access Services Tariff clearly define how the
14 jurisdiction of the traffic is determined and the appropriate inter-carrier compensation.
15 Furthermore, in the AT&T Declaratory Ruling discussed above, the FCC confirmed that
16 access charges apply to certain phone-to-phone VoIP traffic. Sprint's evidence shows that
17 the traffic being terminated to Sprint over local interconnection trunks appears to be
18 "phone-to-phone" VoIP that meets the criteria spelled out by the FCC in the AT&T order.
19 Therefore, consistent with that order, the inter-carrier compensation should be based on the
20 jurisdiction of the call as determined by the actual end points of the calling and called
21 party.
22

23 **Q. Your previous answer says the AT&T Declaratory Ruling "confirmed that access**

1 **charges apply to certain phone-to-phone VoIP traffic,” please explain what you mean**
2 **by confirm.**

3 **A.** The AT&T Declaratory Ruling confirmed how existing rules applied to phone-to-phone
4 VoIP. One needs not look further than the statement in paragraph 16 of the FCC
5 Declaratory Ruling to understand that the FCC was making it abundantly clear that the
6 existing rules apply to phone-to-phone VoIP;

7
8 “If the Commission [FCC] had wanted to establish an exemption from
9 section 69.5(b) for certain telecommunications services, it would have been
10 obligated to conduct a rulemaking in conformity with the Administrative
11 Procedure Act.”

12
13 The simple interpretation of this statement is that access charges have always applied to
14 interexchange traffic.

15
16 **Q.** **In addition to the SS7 information and associated call records, what other evidence**
17 **does Sprint have that suggests that the traffic was nothing more than Phone-to-Phone**
18 **VoIP as described in the AT&T Order?**

19 **A.** Sprint’s records demonstrate that there was a significant reduction of traffic delivered to
20 Sprint over KMC’s local interconnection trunks shortly after the AT&T Declaratory
21 Ruling, as reflected in Exhibit KJF-1. The Local MOU in April, 2004 was [REDACTED]
22 MOU. The corresponding traffic for May, 2004 was [REDACTED] MOU. This represents a
23 month-to-month drop of 44%. In addition, KMC’s responses to Sprint’s discovery confirm

1 that on the day the AT&T Declaratory Ruling was released, KMC contacted the self-
2 described enhanced services provider that KMC has stated is responsible for the traffic at
3 issue in this Complaint and expressed its concerns that the provider's traffic was the phone
4 to phone VoIP-type traffic identified in the AT&T Declaratory Ruling. KMC states that it
5 terminated its relationship with this provider shortly after the AT&T Declaratory Ruling
6 was issued, accounting for the significant decline in local interconnection traffic Sprint had
7 observed. If the provider or KMC had been able to demonstrate that the traffic was truly
8 enhanced services traffic, there would have been no reason for the traffic to have stopped.
9 It appears the KMC believed it was at risk and decided to discontinue its relationship with
10 the self-described enhanced services provider.

11
12 **Q. Does a claim by a company that it is an Enhanced Service Provider automatically**
13 **make its voice traffic an enhanced service?**

14 **A.** No. The fact that a company claims to be an Enhanced Service Provider does not mean
15 that its voice traffic is an enhanced service. The characteristics of the traffic itself
16 determine whether it is or is not an enhanced service.

17
18 **Issue 7: Was KMC required to pay Sprint its tariffed access charges for the traffic that is**
19 **the subject of this complaint? If yes, what is the appropriate amount, if any, due to Sprint**
20 **for such traffic?**

21
22 **Q. What is the basis for whether KMC is required to pay access charges for the traffic**
23 **that is subject to this complaint?**

1 A. As explained above, the basis for whether KMC is required to pay access charges for the
2 toll traffic that it delivered to Sprint over local interconnection trunks is the language in
3 Interconnection Agreements between Sprint and KMC, the language in Sprint's Access
4 Service Tariff and Florida Statutes. Each of these three vehicles makes it abundantly clear
5 that KMC is required to pay Sprint's tariffed access charges on all traffic that is not local.

6

7 **Issue 8: Did KMC deliver interexchange traffic to Sprint over local interconnection trunks**
8 **in violation of the terms of its Interconnection Agreements with Sprint? If yes, what**
9 **is the appropriate amount, if any, due to Sprint for such traffic?**

10

11 **Q. Is routing of toll traffic over local interconnection trunks a violation of the**
12 **interconnection agreements between Sprint and KMC.**

13 A. Yes. As stated previously, there are three contracts that need to be considered, the 1997
14 MCI Agreement, the FDN Agreement and the 2002 MCI Agreement. The language from
15 each of the agreements follows:

16

17 Attachment IV – Interconnection of the 1997 MCI Agreement contains the following
18 language.

19

1.1 The Parties shall initially reciprocally terminate Local Traffic and
20 IntraLATA/InterLATA toll calls originating on each other's networks as follows:

21

1 1.1.1 The Parties shall make available to each other two-way trunks for the
2 reciprocal exchange of combined Local Traffic, non-equal access
3 IntraLATA toll traffic, and local transit traffic to other ILECs.

4 1.1.2 Separate two-way trunks will be made available for the exchange of
5 equal access InterLATA or IntraLATA interexchange traffic that transits
6 Sprint's network. Upon agreement between MCI and Sprint, equal access
7 InterLATA and/or IntraLATA traffic may be combined on the same trunk
8 group as Local Traffic, non-equal access IntraLATA toll traffic, and local
9 transit traffic.

10
11 The FDN Agreement contains the following language.

12 57.1.1. The Parties shall initially reciprocally terminate Local Traffic and
13 IntraLATA/InterLATA toll calls originating on the other Party's network
14 as follows:

15 57.1.1.1. The Parties shall make available to each other two-way trunks
16 for the reciprocal exchange of combined Local Traffic, and non-
17 equal access IntraLATA toll traffic. Neither Party is obligated
18 under this Agreement to order reciprocal trunks or build
19 facilities in the establishment of interconnection arrangements
20 for the delivery of Internet traffic. The Party serving the Internet
21 service provider shall order trunks or facilities from the
22 appropriate tariff of the other Party for such purposes and will be
23 obligated to pay the full cost of such facility.

1 57.1.1.2. Separate two-way trunks will be made available for the
2 exchange of equal-access InterLATA or IntraLATA
3 interexchange traffic that transits Sprint's network.

4
5 **Attachment 4 – Interconnection of the 2002 MCI Agreement contains the following**
6 **language.**

7 1.1 The Parties shall initially reciprocally terminate Local Traffic, ISP-bound
8 traffic, and IntraLATA/InterLATA toll calls originating on each other's networks
9 as follows:

10
11 1.1.1 The Parties shall make available to each other trunks for the
12 reciprocal exchange of combined Local Traffic, ISP-bound traffic, non-
13 equal access IntraLATA toll traffic, and local transit traffic to other ILECs.

14
15 1.1.2 Separate trunks will be made available for the exchange of equal
16 access InterLATA or IntraLATA interexchange traffic that transits Sprint's
17 network. Upon agreement between MCI and Sprint, equal access
18 InterLATA and/or IntraLATA traffic may be combined on the same trunk
19 group as Local Traffic, non-equal access IntraLATA toll traffic, and local
20 transit traffic.

21
22 **Q. Has KMC violated the terms of the interconnection agreement by delivering to Sprint**
23 **over local interconnection trunks the interexchange traffic routed to KMC by the**

1 **self-described enhanced service provider KMC has said is responsible for the traffic**
2 **at issue in this Complaint?**

3 **A.** Yes. The interconnection agreement places the responsibility on each party to ensure that
4 traffic is routed properly. KMC cannot escape its responsibility to comply with the terms
5 of the interconnection agreement by deflecting responsibility to its customers, in this case a
6 self-described enhanced services provider.

7
8 **Issue 9: To what extent, if any, is Sprint's backbilling limited by its Interconnection**
9 **Agreements with KMC, Sprint's tariffs, or other applicable law?**

10
11 **Q.** **Do the terms of the interconnection agreements applicable to this dispute limit either**
12 **party's ability to backbill the other party when a party determines that a violation of**
13 **the terms of the interconnection agreement have resulted in underpayment or**
14 **overpayment of the appropriate intercarrier compensation due?**

15 **A.** No. Neither the interconnection agreements nor Sprint's tariffs contain any backbilling
16 limitations applicable to one party's failure to pay appropriate intercarrier compensation
17 because traffic was misrouted in violation of the agreement. Section 364.16(3)(a), Florida
18 Statutes, also contains no backbilling limitations and, in fact, appears to contemplate
19 backbilling if a violation is found. If any backbilling limitations apply, they are the
20 limitations imposed by the applicable statutory limitations period. Section 95.11(2),
21 Florida Statutes, sets forth a five-year limitations period for actions based on contract
22 violations. The Commission has recognized the applicability of the five-year statutory
23 limitations period to billing disputes under interconnection agreements in an arbitration

1 proceeding involving Verizon and Covad, Order No. PSC-03-1139-FOF-TP in Docket No.
2 020960-TP. In addition, section 95.11(3)(f), Florida Statutes, sets forth a four-year
3 limitations period for actions based on statutory liability. Finally, Section 95.11(3)(j),
4 Florida Statutes, sets forth a four-year limitations period for actions founded on fraud.
5 Therefore, the shortest applicable statutory limitations period is four years. Sprint's claims
6 relate to traffic wrongfully delivered to Sprint in violation of the interconnection agreement
7 and Florida law beginning July 2002, well within even the shorter four year limitations
8 period.

9
10 **Q. Does that conclude your testimony?**

11 **A.** Yes.
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