

**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 ) Docket No. 041144-TP  
pursuant to its interconnection agreement and )  
Sprint's tariffs and for violation of )  
Section 364.16(3)(a), Florida Statutes. )

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**REBUTTAL TESTIMONY OF**

**CHRISTOPHER S. MENIER**

**ON BEHALF OF**

**KMC TELECOM III LLC,  
KMC TELECOM V, INC.,  
AND  
KMC DATA LLC**

**MAY 10, 2005**

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1       **Q.     Please state your name for the record.**

2       A.     My name is Christopher S. Menier

3       **Q.     Who is your current employer?**

4       A.     I am currently employed by NexTone Communications, Inc. 101 Orchard Ridge  
5             Drive, Suite 300, Gaithersburg, Maryland. NexTone develops and sells  
6             equipment used by entities that provide Voice over Internet Protocol (“VoIP”)  
7             services. I am Director of Strategic Accounts for NexTone. I started at NexTone  
8             in January 2005.

9       **Q.     Were you ever employed by KMC?**

10      A.     Yes. I was employed by KMC from January 2001 to September 2004. At the  
11             time I left KMC, I was Vice President of Wholesale Services.

12      **Q.     What were your responsibilities in that position?**

13      A.     The Wholesale Services group was responsible for selling to large customers,  
14             defined generally as customers with operations in at least two different KMC  
15             areas, and also meeting certain minimum size criteria. These customers included  
16             large businesses, Internet Service Providers (“ISPs”), interexchange carriers, and  
17             others. Within the Wholesale Services group, I managed a team of about 7  
18             salespeople and support staff. I also personally handled some direct sales  
19             activities. Finally, I had project management responsibility for certain customer  
20             service activities.

21      **Q.     Please describe your educational and professional background.**

22      A.     I attended the University of Iowa as a computer science major but left in my  
23             junior year, 1997, to start an ISP. My company, based in Bonita Springs, Florida,

1 did business under the name of Gulf Coast Internet. In late 2000 I sold my  
2 company to a larger ISP. Shortly thereafter I took a position as Sales Manager in  
3 Ft. Myers with KMC. After a few months I moved into the National Markets  
4 team; then I became Director of National Accounts. I was promoted to Vice  
5 President of Wholesale Services in October 2003.

6 **Q. What is the purpose of this Rebuttal Testimony?**

7 A. My understanding is that, in Sprint's direct testimony in this case, Sprint claims  
8 that KMC, through its sale of PRI services to Customer X was actively and  
9 knowingly aiding Customer X in the avoidance of access charges for  
10 interexchange traffic.

11 **Q. Is that true?**

12 A. No.

13 **Q. How do you know it is not true?**

14 A. I know it is not true because in the course of my job at KMC, I am the one who  
15 negotiated the arrangements at issue with Customer X that were established in Ft.  
16 Myers and Tallahassee.

17 **Q. Had KMC ever previously sold any services to Customer X?**

18 A. As far as I am aware, no.

19 **Q. Please describe your involvement with this sale in more detail.**

20 A. I was the primary person at KMC involved in the negotiation and sale of the PRI  
21 services to Customer X. Customer X initially sent an inquiry to KMC in the  
22 spring of 2002 about the possible provision of services. I was the person at KMC

1 that responded to that inquiry. I discussed their needs with them and handled  
2 getting the agreement with them signed.

3 **Q. What did KMC agree to provide Customer X?**

4 A. KMC agreed to provide two-way PRIs in Ft. Myers and Tallahassee, under a two-  
5 part charging structure. For a fixed charge each month, Customer X received the  
6 PRIs and a monthly usage allowance. For traffic over the monthly allowance  
7 (400,000 minutes), Customer X was subject to additional charges.

8 **Q. In your role at KMC, did you have an understanding of KMC's services and  
9 pricing plans?**

10 A. Yes, that was part of my job responsibility as a sales person.

11 **Q. Was the arrangement for Customer X significantly different from KMC's  
12 generally available offerings?**

13 A. No. KMC offered a variety of pricing plans associated with PRI services  
14 depending on the size of the customer, and the expected volume, directionality  
15 and nature of the traffic. I was in the wholesale group, so I was primarily  
16 concerned with PRI offerings to higher-volume customers. My understanding  
17 was that KMC had sold similar PRI arrangements to other wholesale customers.

18 **Q. Do you know whether the arrangement for Customer X was exactly the same  
19 as arrangements KMC had made with other customers?**

20 A. No, I do not know. The particular details for Customer X might well have been  
21 different. One of the reasons that large customers with innovative businesses  
22 typically came to KMC and other CLECs was our ability to offer more  
23 customized services than might have been available from the ILEC. Also, even

1 for completely standard services, CLECs generally offered better prices than the  
2 ILEC, along with more responsive customer support. This meant that each  
3 customer's service arrangement — particularly each large customer's service —  
4 would likely be different in some ways

5 **Q. Did Customer X tell you what it would use the PRIs for?**

6 A. Yes, it did.

7 **Q. What did Customer X tell you?**

8 A. Customer X told me that it was an enhanced service provider and, in particular,  
9 that Customer X supported, as its own customers, other entities involved in  
10 providing VoIP services.

11 **Q. Did you have any understanding at that time about the proper rate treatment**  
12 **of this traffic?**

13 A. Yes.

14 **Q. What was that understanding?**

15 A. My understanding was that Customer X would be sending KMC enhanced  
16 services traffic and that enhanced services traffic was not subject to access  
17 charges. Instead, enhanced services traffic was supposed to be treated like local  
18 traffic.

19 **Q. Did Customer X ever tell you anything about whether they were a**  
20 **telecommunications carrier?**

21 A. Yes, they did.

22 **Q. What did Customer X tell you?**

1 A. Customer X told me on several occasions that they were not a  
2 telecommunications carrier. In fact, they specifically told me that they were an  
3 enhanced service provider, not a telecommunications carrier.

4 **Q. Mr. Menier, a Sprint witness, Mr. Burt, has claimed that KMC knowingly**  
5 **delivered interexchange traffic, properly subject to access charges, over local**  
6 **interconnection trunks. Do you agree with Mr. Burt?**

7 A. No, I do not.

8 **Q. Why not?**

9 A. As I just told you, Customer X specifically told me that it was an enhanced  
10 service provider and was not a carrier. I believed them and made my  
11 recommendations about what services KMC should offer to them on that basis.  
12 Also, as I said above, my understanding at the time was that enhanced services  
13 traffic was not subject to access charges. I had reason to understand this issue  
14 both as a result of discussions within KMC and because of my own experience as  
15 the owner/operator of an ISP. In that role, I purchased end user PRIs in Bonita  
16 Springs, Ft. Myers and elsewhere from Sprint for my ISP business. And, as I just  
17 said, I also reviewed this matter with KMC personnel, who told me the same  
18 thing.

19 **Q. Are you saying for a fact that enhanced services traffic is never subject to**  
20 **access charges?**

21 A. No. I am not a lawyer and am not a regulatory policy expert. I have no basis to  
22 say what the “right” legal or regulatory classification of this kind of traffic  
23 “really” is. What I can say is what I believed and understood at the time of my

1 involvement with setting up the service for Customer X. What I believed and  
2 understood at that time was, first, that Customer X was an enhanced service  
3 provider, not a carrier, and second, that enhanced services traffic was treated as  
4 local and not long distance, and therefore not subject to access charges.

5 **Q. If that's true, were you surprised when Sprint demanded access charges for**  
6 **this traffic?**

7 A. No, I was not. I understood that many incumbent local carriers disagreed with the  
8 rule that enhanced services traffic was treated as local, and were trying to get that  
9 rule changed so access charges would apply. But I certainly did not understand  
10 that the FCC or anyone else had actually changed the rule.

11 **Q. Would an enhanced services provider like Customer X have good reasons to**  
12 **come to KMC other than the possibility of avoiding access charges?**

13 A. Yes. As I just said, I did not believe that access charges applied to Customer X's  
14 enhanced services traffic. But, as I noted above, in general CLECs offered more  
15 flexible service arrangements, better prices and better customer service than the  
16 ILECs did. It was therefore perfectly natural for a large customer like Customer  
17 X to seek the services it needed from KMC as opposed to Sprint or other ILECs.

18 **Q. Does this conclude your rebuttal testimony?**

19 A. Yes, it does.