

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **REBUTTAL TESTIMONY**

3 **OF**

4 **JAMES R. BURT**

5 **DOCKET NO. 041144-TP**

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

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

10
11 **Q.** Are you the same James R. Burt that submitted direct testimony in this docket on
12 February 28, 2005?

13 **A.** Yes, I am.

14
15 **Q.** What is the purpose of your Rebuttal Testimony?

16 **A.** The purpose of my testimony is to rebut KMC's direct testimony presented in this case by
17 Marva Brown Johnson and Timothy E. Pasonski. Generally, my testimony relates to Issues 4
18 through 8.

19
20 **Q.** How does Ms. Johnson characterize the issues in this complaint?

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1 A. Ms. Johnson admits that KMC delivered traffic to Sprint over local interconnection trunks
2 and she does not dispute the fact that both end points of the calls in question were not within
3 the same local calling area. She does attempt to justify placing this interexchange traffic
4 over the local interconnection trunks between Sprint and KMC by claiming the traffic is
5 enhanced services traffic. She further attempts to distance KMC from its responsibility to
6 comply with 1) the terms of its interconnection agreement with Sprint, 2) Sprint's access
7 tariffs and 3) Florida State law by suggesting that KMC is not responsible. Ms. Johnson
8 suggests that the fault lies with either Customer X (Johnson Direct, page 5), a self-
9 proclaimed enhanced service provider, or some unidentified IXC (Johnson Direct, page 13)
10 and that one of these entities, should be financially responsible.

11

12 **Q. Ms. Johnson is suggesting that the relationship between KMC and Customer X was not**
13 **unique in any way. In other words, Customer X was just another PRI customer of**
14 **KMC's, is that correct?**

15 A. Yes. Ms. Johnson characterizes the relationship between KMC and Customer X as nothing
16 out of the ordinary. Customer X was purchasing PRIs from KMC and KMC did not
17 question Customer X's reasons for doing so.

18

19 **Q. Was there anything unique about the PRIs Customer X was purchasing from KMC?**

20 A. Yes. The PRI circuits KMC sold to Customer X may be end user services, but they are not
21 local services. In other words, the PRIs do not originate and terminate within the same local

1 calling area. Even accepting Ms. Johnson's argument that the traffic originates with
2 Customer X rather than the calling party (which Sprint does not), the circuits originate in
3 Orlando, FL and terminate in either Tallahassee, FL or Fort Myers, FL. This makes the PRI
4 circuits interexchange by jurisdiction.

5
6 **Q. Why is the fact that the PRI circuits sold by KMC to Customer X are interexchange**
7 **circuits important to whether access charges apply to the traffic as Sprint claims,**
8 **rather than reciprocal compensation as KMC claims?**

9 **A.** The fact that the PRI circuits sold by KMC to Customer X are interexchange circuits is
10 important to whether access or reciprocal compensation applies to the traffic because it has
11 been Sprint's position that KMC was knowingly attempting to avoid access charges. The
12 fact that Customer X's PRI circuits are interexchange based on the end points of the circuits
13 supports Sprint's claims. While KMC claims not to have known where the traffic was
14 before it reached KMC's network, certainly KMC knew that calls from Orlando to
15 Tallahassee or Ft. Myers are not local calls under the parties' interconnection agreements.
16 In addition, the fact that KMC knowingly populated the records by assigning Customer X
17 numbers homed to the Tallahassee and Ft. Myers rate centers to make the traffic appear to
18 be local supports Sprint's claims that access charges are due for this traffic.

19
20 **Q. How do the interconnection agreements between the parties define local traffic?**

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

4
5 Part B – Definitions of the 1997 MCI Agreement defines local traffic as follows.

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

10

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

12 "Local Traffic," for the purposes of this Agreement the Parties shall agree
13 that "Local Traffic" means traffic (excluding CMRS traffic) that is originated
14 and terminated within Sprint's local calling area, or mandatory expanded area
15 service (EAS) area, as defined by State commissions or, if not defined by
16 State commissions, then as defined in existing Sprint tariffs. For this
17 purpose, Local Traffic does not include any Information Access Traffic.
18 Neither Party waives its' rights to participate and fully present its' respective
19 positions in any proceeding dealing with the compensation for Internet
20 traffic."

21

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

2 "LOCAL TRAFFIC', for purposed of reciprocal compensation, means any
3 telephone call that originates in one exchange and terminates in either the
4 same exchange, or other local calling area associated with the originating
5 exchange (e.g., Extended Area Service) as defined and specified in Section
6 A3 of Sprint's General Subscriber Service Tariff. The applicability or
7 inapplicability of this definition to any traffic does not affect either Party's
8 right to define its own local calling areas for the purpose of charging its
9 customers to originate calls."

10

11 **Q. Does KMC's characterization of the PRI circuits sold to Customer X as "local PRI**
12 **circuits" (Johnson Direct, page 20, line 12) take precedent over the language in the**
13 **interconnection agreement KMC signed with Sprint?**

14 **A.** No. The fact that KMC characterized the PRI circuits it sold to Customer X as "local PRI
15 circuits" does not take precedent over the language in the interconnection agreement
16 between Sprint and KMC that clearly says that traffic that is not originated and terminated
17 within a local calling area, i.e., the interexchange PRI circuits sold by KMC to Customer X,
18 will not be treated as local.

19

20 **Q. Has the Florida Public Service Commission addressed how the jurisdiction of traffic**
21 **should be determined for the purposes of reciprocal compensation?**

1 **A.** Yes. The Florida Public Service Commission has addressed how the jurisdiction of traffic
2 should be determined in *In re: Investigation into appropriate methods to compensate*
3 *carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of*
4 *1996*, Docket No. 000075-TP, ORDER NO. PSC-02-1248-FOF-TP, issued September 10,
5 2002 (the “Generic Reciprocal Compensation Order”). In the excerpts from the Order that I
6 include below the Commission clearly states that the end points of a call determine the
7 jurisdiction of the call.

8
9 We disagree with the ALEC position that jurisdiction of traffic should be
10 determined based upon the NPA/NXXs assigned to the calling and called
11 parties.(at page 30)

12
13 We believe that the classification of traffic as either local or toll has
14 historically been, and should continue to be, determined based upon the end
15 points of a particular call. We believe this is true regardless of whether a call
16 is rated as local for the originating end user (e.g., 1-800 service is toll traffic
17 even though the originating customer does not pay the toll charges). (at page
18 30)

19
20 **Q.** **Did this same order address intercarrier compensation?**

1 **A.** Yes. The Generic Reciprocal Compensation Order left the matter of whether reciprocal
2 compensation or access charges apply to the parties to negotiate. The following excerpts
3 from that Order make this clear

4
5 This raises the issue of whether reciprocal compensation or access charges
6 should be applied to virtual NXX/FX traffic. We agree with BellSouth
7 witness Ruscilli that calls to virtual NXX customers located outside of the
8 local calling area to which the NPA/NXX is assigned are not local calls for
9 purposes of reciprocal compensation. As such, we believe that they are not
10 subject to reciprocal compensation. (at page 31)

11
12 We agree with witness Haynes that traffic that originates in one local calling
13 area and terminates in another local calling area would be considered
14 intrastate exchange access under the FCC' s revised Rule 51.701 (b) (1).(at
15 page 31)

16
17 We believe that whether reciprocal compensation or access charges should
18 apply to virtual NXX/FX traffic is better left for parties to negotiate in
19 individual interconnection agreements. We note that while virtual NXX calls
20 that terminate outside of the local calling area associated with the rate center
21 to which the NPA/NXX is homed are not local calls, and therefore carriers

1 are not obligated to pay reciprocal compensation, parties are free to negotiate
2 intercarrier compensation terms in their agreements that reflect the most
3 efficient means of interconnection.(at page 33)
4
5

6 **Q. Did Sprint and KMC agree that reciprocal compensation should apply to**
7 **interexchange traffic?**

8 **A.** No. Sprint and KMC did not agree that reciprocal compensation traffic should apply to
9 interexchange traffic. In fact, the opposite is true. As I stated in my direct testimony on
10 page 13-14, the interconnection agreement between KMC and Sprint clearly states that
11 access charges apply to interexchange traffic.
12

13 **Q. Since the Generic Reciprocal Compensation Order makes it clear that the PRIs KMC**
14 **sold to Customer X are interexchange circuits and that KMC erred in assuming that**
15 **reciprocal compensation applied to the traffic passed over these interexchange PRI**
16 **circuits, why do you think KMC made this assumption rather than negotiating with**
17 **Sprint as the Order states?**

18 **A.** I can't claim to know what KMC's motives were, I can only assume. According to
19 Confidential Exhibit MJB-3 accompanying Ms. Johnson's testimony, KMC was selling PRI
20 circuits to Customer X for \$████ per PRI per month. In his Direct Testimony on page 8,
21 lines 2-4, Mr. Pasonski states that these circuits had a cap of █████ monthly MOU over

1 which additional charges applies. This equates to approximately \$ [REDACTED] per MOU. The
2 aggregate Florida intrastate switched access rate per MOU was approximately \$0.05 per
3 MOU for the period of time covering this dispute. [REDACTED] MOU at \$0.05 per MOU equates
4 to \$ [REDACTED] per month in access charges. The difference between the \$ [REDACTED] for the access
5 expense Sprint claims should apply to this traffic and the \$ [REDACTED] in revenue KMC was
6 receiving suggests KMC would have needed to charge considerably more for the PRI and as
7 a result may not have gotten Customer X's business. E-mails between KMC and Customer
8 X provided in KMC's Response to Sprint's POD No. 5 suggest that pricing was a critical
9 issue to KMC in obtaining Customer X's business. Excerpts from these e-mails are included
10 in Exhibit JRB-1.

11
12 **Q. Is there any evidence to support the assumption you made above that KMC had a**
13 **financial incentive to terminate Customer X traffic to Sprint over local interconnection**
14 **trunks?**

15 **A.** Yes. In KMC responses to Sprint's discovery (see Exhibit JRB-1) it becomes quite clear
16 that KMC was aware of the value of avoiding access charges and communicated this to
17 Customer X. It is clear from the e-mails and documents in KMC's responses that KMC
18 recognized that delivering traffic to Sprint in this manner would be problematic.

19
20 One such document is the contract that KMC was negotiating with Customer X to provide
21 the subject PRI services. (See, Exhibit JRB-1, page 59, 0637) The language in paragraph 4

1 of the agreement goes into great detail to explain that the PRIs are to be used exclusively for
2 enhanced or information or VOIP services. Paragraph 5 acknowledges the mutual
3 understanding between KMC and Customer X that VOIP traffic may lawfully be terminated
4 to the Public Switched Telephone Network as local traffic and is exempt from switched
5 access charges. It is obvious that KMC was concerned that the self-serving mutual
6 understanding between KMC and Customer X about the application of access charges was
7 not shared with the ILECs. And, KMC did not take the opportunity to share this information
8 with Sprint or to ask the FPSC for a decision on the issue. Paragraph 6 of the agreement
9 addresses the process for addressing access charge claims by local exchange carriers. In
10 section 6 iii, KMC is indemnified as to ILEC claims.

11
12 **Q. Do the e-mails between KMC and Customer X reveal KMC's knowledge that access**
13 **charges were an issue with Customer X's traffic?**

14 **A.** Yes. Exhibit JRB-1, Pages 117 through 124, 0693-0702 are a series of emails between
15 Christopher Menier, a Vice President for KMC and Customer X. This series of emails
16 develops the following information: 1. That 100% of the traffic will be bound for
17 termination to ILECs (page 118). 2. That KMC wants indemnification language. (page 119)
18 3. That "using this type service will save you thousands of dollars a month on termination
19 charges to the LEC." 4. That the use of the subject PRIs was bypass of access charges as
20 stated by Christopher Menier in his May 28, 2002, email to Customer X. Mr. Menier's
21 specific comment was "I can have you pricing by the end of the week, possibly sooner. I

1 would like to stress the fact that KMC can handle services in all markets as well as the other
2 markets you mentioned across the country. The LECs will not be too anxious to provide
3 “access bypass” services so a CLEC is the obvious choice.” (Exhibit JRB-1, Pages 121 and
4 122, 0699-0700) 5. KMC anticipated paying reciprocal compensation rates at an estimated
5 \$.001 per minute of use. (Exhibit JRB-1, Page 115, 0693)

6
7 **Q. Please summarize your analysis of these documents.**

8 A. First, if the convenient mutual understanding of the parties that access charges do not apply
9 to the subject traffic is correct, why does Customer X need KMC? It is illogical for
10 Customer X to configure its network to deliver traffic to KMC for subsequent delivery to
11 ILECs if the alleged VOIP traffic is exempt from access charges as KMC claims. Further, if
12 as KMC alleges, local service can be used to terminate such traffic, why should Customer X
13 enter into an agreement with KMC in which they could potentially pay \$.001 per minute of
14 use to terminate the traffic in excess of 400,000 minutes of use in lieu of flat rate local
15 services which would be allowed by the ILECs for Enhanced Services traffic. It doesn't
16 pass the test of reasonableness. Why would Customer X go to KMC and order
17 approximately 650 voice grade circuits to terminate traffic to Sprint? There has to be a
18 financial incentive, which does not exist if the traffic clearly is exempt from access charges
19 as KMC asserts. Clearly, KMC's defense fails on the lack of credibility of the evidence and
20 based on pure and simple logic. The above reference documents, show that KMC knew it
21 was bypassing access charges. And, it is highly suspect how KMC can claim that traffic it

1 transports across LATA boundaries fits the definition of local service, even if it were truly
2 Enhanced Services traffic, which KMC has not demonstrated and Sprint does not accept.
3 The tests that Sprint did in an attempt to identify the intermediate IXC for the traffic that
4 originated on its network indicated that the customers originating the subject traffic were
5 presubscribed to IXCs, not Enhanced Service Providers. This further proves the point that
6 KMC and Customer X knowingly entered into a clandestine arrangement to terminate
7 interexchange long distance traffic over local interconnection trunks to avoid the payment of
8 access charges contrary to KMC's interconnection agreements with Sprint.

9
10 **Q. Please describe your impression of the relationship between KMC and Customer X.**

11 **A.** The Direct Testimony of Ms. Johnson (Johnson Direct pages 10-14) suggests that the
12 relationship with Customer X was nothing out of the ordinary, but once KMC received
13 Sprint's claim for access charges, KMC immediately challenged Customer X to prove that
14 the VoIP traffic it was sending to KMC over interexchange PRI circuits was indeed
15 enhanced services traffic. KMC also communicated to Customer X that it would be liable
16 for the access charges.

17
18 **Q. Did Customer X provide any evidence to KMC that the traffic it was sending KMC**
19 **over the interexchange PRI circuits was enhanced services traffic prior to KMC selling**
20 **Customer X the PRI service?**

1 A. KMC has not provided any evidence to suggest that Customer X substantiated what type of
2 traffic Customer X was sending to KMC using the interexchange PRI circuits prior to
3 KMC's selling them to Customer X. In fact, KMC admits that it accepted Customer X's
4 "self-certification" without further inquiry. See, for example, KMC's Responses to Staff's
5 Interrogatory Nos. 8 and 11.

6
7 **Q. The Direct Testimony of Ms. Johnson (Johnson Direct, page 21, lines 18-25 and page**
8 **21, lines 1-13) suggests that KMC substantiates with its customers the nature of the**
9 **VoIP traffic it is receiving from its PRI customers for termination to the PSTN. Is this**
10 **statement contradicted elsewhere in her testimony?**

11 A. It appears as if Ms. Johnson does contradict her statement that KMC validates the type of
12 VoIP traffic its PRI customers deliver to KMC for termination to the PSTN. On pages 11
13 through 13 Ms. Johnson discusses how KMC attempted to get information from Customer X
14 on the nature of the traffic being delivered to KMC over the PRI circuits. If KMC had
15 validated the nature of the traffic as she suggests on page 21 and 22, KMC would already
16 have the information it requested from Customer X and the request would be unnecessary.
17 Furthermore, as I've stated elsewhere in this testimony, KMC has not once provided any
18 evidence that the traffic in question is nothing more than plain old voice traffic even though
19 this disputed fact is critical to the position taken by KMC that the traffic is not subject to
20 access charges.

21

1 **Q. Did Customer X provide any evidence to KMC that the traffic it was sending KMC**
2 **over the interexchange PRI circuits was enhanced services traffic after Sprint sent**
3 **KMC access charge invoices?**

4 **A.** No. KMC specifically asked Customer X to provide additional information regarding the
5 nature of the traffic it was sending KMC over the PRI circuits, but to my knowledge and
6 based on the Ms. Johnson's testimony (Johnson Direct page 11-12) Customer X did nothing
7 more than tell KMC it was an enhanced service provider, providing service that is "vastly
8 different than AT&T's self-proclaimed regulated telecommunications service."
9

10 **Q. Given all the controversy surrounding intercarrier compensation for VoIP traffic, is it**
11 **appropriate to accept a carrier's opinion regarding the characterization of such traffic**
12 **for intercarrier compensation purposes?**

13 **A.** No. Given all the controversy surrounding the intercarrier compensation for VoIP traffic, it
14 is not appropriate to simply accept a carrier's opinion regarding its traffic and how it should
15 be treated for intercarrier compensation purposes. This is especially true in the case of
16 KMC and Customer X since KMC knew the contract between Sprint and itself was clear on
17 the fact that access charges applied to interexchange traffic and that Florida Statute
18 364.16(3)(a) makes it illegal to deliver traffic that is subject to access charges over local
19 interconnection trunks. These facts suggest that KMC should have been more thorough in
20 validating the nature of the traffic it was receiving from Customer X. This is especially the
21 case since the PRI circuits sold by KMC to Customer X were interexchange circuits. This

1 should have triggered some form of substantiation on KMC's part to determine exactly what
2 was occurring and should have caused KMC to consult with Sprint to ensure it was not
3 violating the parties' interconnection agreements. KMC made two bad assumptions that led
4 to this dispute. First, KMC assumed the traffic Customer X was delivering to KMC was
5 enhanced services traffic and, second, KMC assumed that enhanced services traffic could
6 automatically be terminated to Sprint over local interconnection trunks. The second
7 assumption is wrong because the applicable interconnection agreements do not identify
8 enhanced services as a separate category of traffic for intercarrier compensation purposes.
9 The only categories are: Local Traffic, ISP-Bound traffic, and "toll" (interstate and
10 intrastate access traffic). Pursuant to the interconnection agreements, the traffic must be
11 originated and terminated in Sprint's local calling area. Toll traffic is as defined in Sprint's
12 tariff: "Compensation for the termination of toll traffic and the origination of 800 traffic
13 between the interconnecting parties shall be based on the applicable access charges in
14 accordance with FCC and Commission Rules and Regulations and consistent with the
15 provisions of Part F of this Agreement." Even if KMC's first assumption was right, and
16 Sprint does not agree that it was, the fact that the interconnection agreements don't
17 separately address enhanced services traffic, should have resulted in KMC discussing and
18 gaining agreement from Sprint as to the proper intercarrier compensation for this traffic.

19
20 **Q. To what extent did KMC go to validate the type of traffic being sent to KMC over the**
21 **PRI circuits after Sprint began sending KMC access charge invoices?**

1 **A.** Based on the information provided in the attachment to KMC's Confidential Response to
2 Sprint's Interrogatory No. 15, KMC attempted to validate the type of traffic being sent to
3 KMC over the PRI circuits after Sprint began sending KMC access charge invoices by
4 attempting to get Customer X to sign a Master Services Agreement with very specific terms
5 defining the type of traffic Customer X would be sending KMC. Apparently, KMC and
6 Customer X had only been operating under a Service Agreement and KMC wanted
7 Customer X to sign a Master Services Agreement with the Attachments defining specific
8 traffic types eligible for KMC's PRI service. The actions taken by KMC after the fact
9 suggest they think they have a responsibility to validate the traffic Customer X was sending
10 KMC. Unfortunately, KMC did not do this prior to selling PRI services to Customer X.
11 Had they validated the nature of Customer X's traffic and subsequently discussed this with
12 Sprint, Sprint would not have been forced to take legal action against KMC.

13

14 **Q.** **Is it clear that the traffic being addressed by this complaint proceeding is VoIP traffic?**

15 **A.** Yes. The Direct Testimony of Ms. Johnson (Johnson Direct, page 11, lines 16-20) removes
16 any doubt that the traffic that is subject to this dispute is VoIP traffic.

17

18 **Q.** **Does the fact that the traffic is VoIP qualify the traffic as enhanced services traffic?**

19 **A.** No. The mere fact that the traffic is VoIP does not mean the traffic is enhanced. In Ms.
20 Johnson's Direct Testimony she agrees with this statement (Johnson Direct, Page 19, Lines
21 11-12).

1 **Q. Does KMC claim to have any specific information regarding whether and how the**
2 **Internet protocol was used for the traffic in question?**

3 **A.** No. The Direct Testimony of Ms. Johnson states that KMC did not have any specific
4 information regarding whether and how the Internet protocol was used for the traffic in
5 question (Johnson Direct, Page 21, Lines 7-10). This statement seems at odds with Ms.
6 Johnson's claim that the traffic in question should not be subject to access charges. In
7 effect, what Ms. Johnson is saying is that even though KMC has no idea how or even if the
8 Internet protocol was used on the traffic in question, still the traffic should not be subject to
9 access charges because the traffic may be a certain type of VoIP traffic (Johnson Direct,
10 Pages 15-19).

11
12 **Q. In your opinion, who should carry the burden of proof regarding the type of VoIP**
13 **traffic that is being terminated over Sprint's local interconnection trunks?**

14 **A.** The burden of proof regarding the type of VoIP traffic that is being terminated over Sprint's
15 local interconnection trunks should fall upon KMC in this instance. Given the magnitude of
16 the financial incentive for KMC and Customer X to avoid access charges, the evidence
17 provided by the SS7 records, and the numerous reasons I've stated in my testimony as to
18 why it was improper for KMC to terminate this traffic to Sprint over local interconnection
19 trunks, the presumption must be that the traffic is plain old voice traffic until KMC produces
20 adequate evidence that it is something other than that.

21

1 **Q. Has KMC or any other party shown that the traffic that is the subject of this dispute**
2 **anything other than standard voice traffic?**

3 **A.** No. Neither KMC nor KMC's customer, according to correspondence between the parties
4 contained in Confidential Exhibit MJB-1 to Ms. Johnson's Direct Testimony, have gone any
5 further than to simply say the traffic is enhanced and not subject to access charges. As
6 stated previously, and given the magnitude of this issue, I would assume that if there was
7 proof otherwise, it would have been provided.

8
9 **Q. Does Sprint have any evidence that shows that the traffic in question is nothing more**
10 **than plain voice traffic that terminates to a Sprint subscriber using Plain Old**
11 **Telephone Service (POTS)?**

12 **A.** Yes. Sprint has sample calls that are nothing more than plain voice traffic that terminated to
13 Sprint Florida POTS subscribers. Confidential Exhibit JRB-2 includes the Sprint Florida
14 subscriber invoices with highlights showing the fact that they are POTS subscribers and the
15 sample call that Sprint traced to the KMC local interconnection trunks with Sprint. Also,
16 included in Confidential Exhibit JRB-2 are the SS7 records associated with the sample calls
17 identifying the originating and terminating telephone numbers. The terminating numbers
18 correspond to the telephone numbers on the Sprint Florida subscriber invoices.

19
20 **Q. Has the FCC determined whether access charges apply to VoIP traffic that has a net**
21 **change in protocol but originates or terminates on the public switched network?**

1 **A.** No. The FCC has not made a determination that access charges do not apply to VoIP traffic
2 that has a net change in protocol but originates or terminates on the public switched
3 network. In fact, in the Vonage decision (Federal Communications Commission WC Docket
4 No. 03-211, FCC 04-267, para. 44), the FCC specifically declined to rule on that issue.

5
6 **Q.** **Has the FCC had an opportunity to rule on whether access charges apply to VoIP**
7 **traffic that has a net change in protocol but uses the public switched network for**
8 **origination or termination?**

9 **A.** Yes. In FCC WC Docket No. 03-266, Level 3 filed a petition with the FCC seeking
10 forbearance from access charges on VoIP traffic that has a net change in protocol but uses
11 the public switched network for origination or termination. Apparently, Level 3 was trying
12 to force the FCC to make a much needed decision on this matter. After waiting almost 15
13 months for a decision, Level 3 withdrew its petition the week in which the FCC was
14 required to make a decision or the forbearance petition would be deemed granted. Level 3
15 stated the reason for its withdrawal as being leadership changes within the FCC. However,
16 it is hard to believe Level 3 would have withdrawn the petition had it had any confidence in
17 getting a favorable decision. The act of withdrawing the petition leaves the issue still before
18 the FCC.

19 **Q.** **Please summarize your testimony.**

20 **A.** KMC has attempted to justify the routing of access traffic to Sprint over local
21 interconnection trunks based on an unsubstantiated claim that the traffic is enhanced

1 services traffic and not subject to access charges even though KMC has no data to prove this
2 claim. My testimony makes it clear that there no justification for the position taken by
3 KMC. I have pointed out inconsistencies in Ms. Johnson's Direct Testimony that, alone,
4 support Sprint's position that access charges apply to the traffic in question. The first
5 inconsistency is that KMC has stated that it doesn't have any information regarding how the
6 Internet protocol was used on the traffic in question while at the same time claiming that's
7 the basis for access charges not applying. The second inconsistency is that KMC claims that
8 customers represent and warrant the nature of the traffic they deliver to KMC while at the
9 same time stating that KMC, after repeated attempts, was not able to get Customer X to
10 substantiate the nature of its traffic. Even if the subject traffic were enhanced services
11 traffic, there is no provision in the Sprint/KMC interconnection agreements providing for the
12 termination of the traffic, particularly as it is routed by KMC, as local. The fact that KMC
13 sold PRI circuits in which both end points were not in the same local calling area combined
14 with the Florida Public Service Commission's determination in Docket No. 000075-TP that
15 traffic that originates and terminates outside the local calling area is not local traffic, makes it
16 clear that access charges apply to the traffic in question. In addition, given KMC's lack of
17 evidence regarding the traffic in question and the correspondence between KMC and
18 Customer X when KMC was establishing the service, it is obvious that KMC was attempting
19 to avoid access charges. Finally, Florida law makes it illegal to knowingly route traffic over
20 local interconnection trunks for the purposes of avoiding access charges. Virtually every
21 fact in this case suggests that KMC did just that. The combination of facts and actions by

1 KMC make it apparent that KMC knew exactly what they were doing. As shown in the
2 document provided by KMC in Response to Sprint's POD No. 5, included in my testimony
3 as Exhibit JRB-1, KMC knew it was bypassing access charges for traffic to be delivered to
4 Sprint and had extensive communications regarding their defense and indemnification
5 against a claim that access charges were due. When all is said and done, is it reasonable to
6 believe that Customer X would order approximately [REDACTED] individual circuits from KMC to
7 deliver traffic to Sprint? It just does not seem reasonable for Customer X to do so unless the
8 purpose is for access arbitrage.

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

12
13 **A.** Yes.
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Docket No. 041144-TP
Exhibit __ (JRB-1)
Parts of KMC's Supp Response to Sprint's
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