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Sent: Tuesday, July 05, 2005 4:50 PM
To: Filings@psc.state.fl.us
Subject: 041144-TP Sprint's Response to KMC's Motion to Reconsider the Commission Order on KMC's Motion to Compel
Attachments: Sprint's Response to KMC's Motion to Reconsider.pdf

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ORIGINAL



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July 5, 2005

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
& Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 041144-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint-Florida, Incorporated is Sprint's Response to KMC's Motion to Reconsider the Commission Order on KMC's Motion to Compel.

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

If you have any questions regarding this electronic filing, please do not hesitate to call me at 850-599-1560.

Sincerely,

A handwritten signature in black ink that reads "Susan S. Masterton". The signature is written in a cursive, somewhat stylized script.

Susan S. Masterton

Enclosure

DOCUMENT NUMBER-DATE

06307 JUL -5 05

FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE
DOCKET NO. 041144-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic and U.S. mail this 5th day of July, 2005 to the following:

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Sprint-Florida, Incorporated) Docket No. 041144-TP
Against KMC Telecom III LLC,)
KMC Telecom V, Inc. and KMC Data LLC,)
for failure to pay intrastate)
Access charges pursuant to its interconnection)
Agreement and Sprint's tariffs and for violation of) Filed: July 5, 2005
Section 364.16(3)(a), Florida Statutes.)
_____)

**SPRINT FLORIDA, INCORPORATED'S RESPONSE TO KMC'S MOTION TO
RECONSIDER THE COMMISSION'S ORDER ON KMC'S MOTION TO
COMPEL**

Pursuant to Rule 25-22.0376, F.A.C., Sprint-Florida, Incorporated (hereinafter "Sprint") hereby files its Response to the Motion for Reconsideration of the Commission's Order on KMC's Motion to Compel filed by KMC Telecom III LLC, KMC Telecom V, Inc. and KMC Data, LLC (hereinafter, collectively, "KMC") on June 27, 2005 and served on Sprint via electronic mail. In its Motion KMC makes several references to deposition testimony of Sprint's witness, Ritu Aggarwal, but fails to identify with specificity where that testimony is found in the deposition transcript. KMC's rationale for its incomplete filing is that the deposition transcript upon which it bases its Motion was unavailable at the time the Motion was required to be filed. Sprint has endeavored to the best of its ability to respond to the incomplete deposition transcript referenced in the Motion, but reserves the right to file an additional response to any subsequent filing by KMC identifying the deposition testimony with greater specificity.

STANDARD OF REVIEW

As the Commission has recognized consistently in its rulings on Motions for Reconsideration, whether they are requests to reconsider final or interim rulings, the

standard for granting a Motion for Reconsideration is that the Motion must identify some point of fact or law that the Commission overlooked or failed to consider in rendering its Order. See, *Stewart Bonded Warehouse v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond King Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So. 2d 162 (Fla. 1st DCA 1981). The Commission has held that it is not a sufficient basis for a Motion for Reconsideration that the movant merely believes that a mistake was made (*Steward Bonded Warehouse* at 317) nor is it appropriate for the movant to reargue the same points of fact or law that were considered in the original ruling. See, *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958).

KMC FAILS TO THE MEET THE STANDARD FOR RECONSIDERATION

KMC's Motion seeks reconsideration of the prehearing officer's ruling on KMC's Motion to Compel Sprint to respond to KMC's First Set of Interrogatories and First Request for Production of Documents, insofar as that ruling found that Sprint is not required provide call detail records beyond those Sprint has already provided to KMC.¹ (See, Order No. PSC-05-0650-PCO-TP, issued on June 16, 2005) KMC's Motion wholly fails to the meet the standard for reconsideration discussed above. Despite a specious attempt to support its Motion by identifying the deposition testimony of Sprint's witness Ritu Aggarwal as "new evidence," KMC's arguments are a patent rehashing of its positions which were rejected by the prehearing officer in his ruling on the Motion to Compel. KMC's continued attempts to revisit the same flawed arguments related to its unreasonable request that Sprint create and provide millions of records that KMC is well

¹ While KMC discusses various Interrogatories and PODs in its Motion for Reconsideration, KMC appears to be asking the Commission to reconsider only that portion of its decision related to the CDRs specifically Interrogatory Nos. 1, 7, 10 and 11 and POD Nos. 1, 7 and 10. (Motion for Reconsideration at pages 2 and 3)

aware would impose an undue burden in time and expense on Sprint, demonstrate that KMC's sole intent in this proceeding is to delay the resolution of Sprint's Complaint.

In the Motion for Reconsideration, KMC reiterates its insistence that Sprint must create and produce two and a half years worth of KMC call detail records so that KMC can ostensibly review each record. As Sprint has explained in multiple discovery responses and in its Response to KMC's Motion to Compel, to provide the requested records Sprint would be required to sift through billions of call detail records for all of the carriers that terminate traffic to Sprint to extract the millions of the call detail records that relate to KMC traffic only over the relevant 800 day period. (See, Sprint's Response to KMC's Motion to Compel, attached as Exhibit 1, at page 3) In once again requesting this information through its Motion for Reconsideration, KMC raises no point of fact or law that the prehearing officer overlooked or failed to consider in ruling that the preparation of the information would be "too costly, time consuming, and burdensome" Sprint. (Order on Motion to Compel at page 11) In addition, KMC identifies no point of fact or law that the prehearing officer overlooked or failed to consider in determining, based on Commission precedent, that the raw CDR information KMC seeks, which contains highly sensitive, confidential information concerning other Sprint customers, is beyond the scope of discovery in this case and is protected by section 364.24, F.S. (Order on Motion to Compel at page 11, citing Order No. PSC-98-1058-PCO-TP, *In re: Dade County Circuit Court referral of certain issues in Case No. 92-11654 (Transcall America, Inc. d/b/a ATC Long Distance vs. Telecommunications Services, Inc.) that are within the Commission's jurisdiction*, issued July 15, 1998 in Docket No. 951232) Finally, KMC fails to identify any mistake of law or fact that the prehearing officer overlooked or failed

to consider in making his determination that Sprint is “not required to extract KMC data, thus creating a new document.” (Order on Motion to Compel at page 11, relying on the same prior Commission Order) These rulings are dispositive of KMC’s Motion, regardless of KMC’s allegations of “new evidence” revealed in Ms Aggarwal’s deposition. Therefore, KMC’s Motion for Reconsideration fails to identify any mistake of law or fact that would support the Commission’s reconsideration of the prehearing officer’s ruling and should be denied.

KMC MISINTERPRETS SPRINT’S USE OF THE CDR’S

In addition to being merely a reiteration of its previous arguments, KMC’s assertion that Sprint itself reviewed each and every KMC call detail record is wrong. To determine that the traffic KMC was terminating over local interconnection trunks was, in fact, interexchange traffic, Sprint reviewed only certain individual call detail records involving KMC’s traffic. (See, e.g., Sprint’s Responses to KMC’s Interrogatory Nos. 1, 6, 7 and 9) Sprint also commissioned Agilent Technologies, Inc. to conduct an independent study of KMC’s traffic to verify Sprint’s findings, based on a week of call detail records. (See, e.g., Exhibit WLW-2 attached to the Direct Testimony of William L. Wiley and Aggarwal Deposition Transcript at page 18.) The CDRs that Sprint reviewed, as well as the CDRs that Agilent reviewed, have been provided to KMC. (See, Sprint’s Responses to KMC’s POD Nos. 15 and 18, as well as Exhibit WLW-3 to the Direct Testimony of William L. Wiley)

In addition to the call detail records actually reviewed by Sprint and Agilent in formulating Sprint’s Complaint, in an effort to respond to KMC’s request and to demonstrate to KMC that the days reviewed by Sprint and Agilent were not preselected

to support a desired outcome, Sprint went beyond its obligations under the applicable discovery rules and created and prepared an additional 27 days of CDR records representing one day from the 27 months applicable to the traffic that is the subject of Sprint's complaint. (See Sprint's Response and Supplemental Responses to KMC's POD No. 1 and Exhibit WLW-5 to the Direct Testimony of William L. Wiley) Sprint developed these records as a random sample and has asserted that the number of days provided are a statistically valid representation of the KMC traffic that is the subject of Sprint's Complaint. (See Sprint's Response and Supplemental Responses to KMC's POD No. 1 and Sprint's Response to Staff's Interrogatory No. 21) As stated in both the pre-filed and deposition testimony of Ritu Aggarwal, Sprint's witness responsible for explaining the process for calculating the amount of access charges KMC owes Sprint, Sprint did not review individual call detail records to calculate the PLU/PIU factors applied to KMC's past billings to determine this amount. Rather, to calculate these factors, Sprint used monthly summary SS7 reports produced by the Agilent system. (See, e.g., Aggarwal Rebuttal Testimony at page 4 and Aggarwal Deposition Transcript at pages 41 and 42) As Sprint has explained numerous times, these Agilent summary reports rely on extracted information from the daily CDRs collected by the Agilent business intelligence system used by Sprint. (See, e.g., Sprint's Response and Supplemental Responses to KMC's Interrogatory Nos. 15 and 79 and Sprint's Response to Staff's Interrogatory No. 21) KMC's misunderstanding of the relationship of the monthly summary reports used by Sprint to the underlying call records appears to be the root of KMC's misunderstanding that Sprint, itself, reviewed each call detail record individually. It is this misunderstanding, rather than any mistake of fact or law in the prehearing

officer's ruling, that form the basis of KMC's Motion for Reconsideration. This misunderstanding of the relevant facts is insufficient to support KMC's Motion for Reconsideration, which, therefore, should be denied.

MS. AGGARWAL'S DEPOSITION PROVIDES NO NEW EVIDENCE

In support of its Motion for Reconsideration, KMC asserts that the deposition testimony provided by Ms. Aggarwal introduced new facts not available to KMC or the Commission at the time KMC's original Motion to Compel was considered. (KMC Motion for Reconsideration at paragraph 8) Because the deposition transcript was not available, KMC was unable to cite to particular testimony by Ms. Aggarwal supporting this allegation. The deposition transcript was available to Sprint in preparing its response, so Sprint has attempted to identify each of Ms. Aggarwal's statements that KMC alleges to have introduced "new evidence." Based on this review, Sprint denies that Ms. Aggarwal introduced any relevant, new evidence. Rather, Ms. Aggarwal's deposition responses consistently support the representations Sprint has made as to the methodology it used to determine the amount of past access charges KMC owes Sprint. For instance, in paragraph 10 of its Motion for Reconsideration, KMC alleges that Ms. Aggarwal "made clear that Sprint-FL reviewed, through the Agilent system, all of the SS7 CDRs that Sprint allegedly had available to it as the first and foundational step in its calculation of the extent and scope of KMC's alleged violation." (emphasis supplied by KMC) KMC deliberately mischaracterizes the meaning of Ms. Aggarwal's statements. Rather than introducing new evidence, Ms. Aggarwal simply restates and confirms the process Sprint used to calculate the access charges that was set forth in her pre-filed testimony (at page 4), in numerous Sprint discovery responses (See, e.g., Sprint's Response and

Supplemental Responses to KMC's Interrogatory No. 15, 78 and 79 and Sprint's Response to Staff's Interrogatory Nos. 20 and 21) and in Sprint's original response to KMC's Motion to Compel at footnote 5. See, e.g., Aggarwal Deposition Transcript at pages 41 and 42.

KMC's discussion of Ms. Aggarwal's responses to questions about the relationship of the Agilent CDR MOUs to the billing MOUs is insufficient to support KMC's request that the Commission reconsider the prehearing officer's ruling on its Motion to Compel. (KMC Motion at paragraphs 11 and 14, apparently referring to the discussion in the Aggarwal Deposition Transcript at pages 84-95.) This testimony goes to the sufficiency of the evidence Sprint has presented to support its claims, not to the sufficiency of Sprint's discovery responses. While Sprint believes that its reliance on the Agilent monthly summary data is a reasonable and supportable methodology for developing the PLU/PIU factors it used to back-bill KMC the access charges Sprint should have been paid, KMC is free to argue that the discrepancies it noted in the questions KMC's counsel asked Ms. Aggarwal undermine the validity of Sprint's claims. However, KMC's arguments related to these discrepancies in no way provide a basis for the Commission to reconsider its correct decision that Sprint is not required to undertake the excessively burdensome and expensive task of creating and producing additional weeks or months of CDRs as KMC requests.

Because Ms. Aggarwal's testimony presents no relevant factual evidence that the prehearing officer overlooked or failed to consider in rendering his decision on KMC's Motion to Compel, KMC's Motion for Reconsideration should be denied.

SPRINT HAS FULLY COMPLIED WITH KMC'S DISCOVERY REQUESTS

Sprint's Response to KMC's Motion to Compel details the multitude of information that Sprint has provided in response to KMC's discovery requests. In addition, Sprint's Response to Staff's Interrogatory No. 20 details the various documents that Sprint has provided to KMC to support Sprint's calculation of the access charges KMC owes Sprint. As identified in that Interrogatory (attached hereto as Exhibit 2) Sprint has provided SS7 CDRs for September 10, 2003, SS7 CDRs for the 27 additional days of CDRs and April 19, 2003 correlated call records, that demonstrate that interexchange traffic for which access charge are due was delivered by KMC to Sprint over its local interconnection trunks. In addition, Sprint has provided the terms of the relevant interconnection agreements that define local traffic and require local and access traffic to be terminated via separate trunks. In addition, as detailed in that Interrogatory, Sprint has provided voluminous information explaining and supporting Sprint's methodology for calculating the amount of access charges due, up to and including Sprint's Response and Supplemental Responses to KMC's Interrogatory No. 15, which includes Excel files containing the KMC data extracted from the Agilent monthly SS7 Summary Reports for all carriers that Sprint uses to collect, classify and store the 120 million CDRs that Sprint receives daily for traffic terminated to Sprint. (See attachment to Interrogatory No. 15 on CD labeled KMC Revenue Impacts, specifically tabs designated as "Agilent" and "Agilent Detail.")

KMC has alleged that Sprint has not provided the information Sprint used to develop the factors that are the basis of Sprint's calculation of the amount of access charges KMC owes Sprint for its wrongful termination of access traffic over its local

interconnection trunks. (KMC's Motion at paragraph 10) KMC's assertion is simply false. Sprint did not review every day of KMC's call detail records or each record individually to come up with the factors, as Sprint has repeatedly stated. Rather, as Sprint has explained, Sprint relied on a summary of the call detail records produced by the Agilent system to develop the factors. (See, e.g., Aggarwal Rebuttal Testimony at page 4, Sprint's Response and Supplemental Responses to KMC's Interrogatory No. 15, 78 and 79 and Sprint's Response to Staff's Interrogatory No. 21) The summary created by Agilent is an extraction from the daily, individual call detail records, as Sprint has stated multiple times in the testimony and discovery referred to above. As previously stated, Sprint has provided to KMC the extracted summary SS7 reports relating to KMC's traffic, in its Supplemental Response to KMC's Interrogatory No. 15. With this document, along with the numerous other documents provided by Sprint and detailed in Sprint's Response to Staff's Interrogatory No. 20, Sprint has produced for KMC all of the records that it used to calculate the factors applied to determine the amount of back-billed access charges KMC owes Sprint.²

KMC's assumption that Sprint produced the 27 days of CDRs as support for the development of the PIU/PLU factors is incorrect. While the record is, perhaps, ambiguous concerning this point, Sprint's testimony and discovery responses related to these records clarify that the individual call detail records that Sprint has produced primarily were intended to provide to KMC sufficient information to verify Sprint's

² As Ms. Aggarwal repeatedly emphasized in her deposition and as she stated in her pre-filed testimony, had KMC properly terminated the access traffic over access trunks the correct billing records for each minute of traffic would have been created and produced. (See, e.g., Aggarwal Rebuttal Testimony at pages 3 and 4, Aggarwal Deposition Transcript at pages 33, 34 and 110) KMC chose, instead, to cooperate with its Customer X in a self-described "access by-pass" scheme (See, KMC Response to Sprint's Interrogatory No. 15 and POD No. 5 at bate stamp page 700), Sprint was forced to devise a reasonable surrogate methodology to determine the amount of access charges that Sprint should have received.

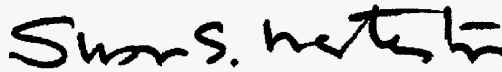
claims that 1) interexchange traffic was terminated to Sprint over KMC's local interconnection trunks (based on the originating calling party number and the terminating called party number) 2) that charge party numbers unrelated to the calling party number, but local to the called party number were inserted into the charge party field in the SS7 records on numerous occasions over the period of time that is subject of Sprint's Complaint and 3) that during this period of time two specific charge party numbers, one local to Sprint's Tallahassee local calling area and one local to Sprint's Ft. Myers local calling area, were used on multiple occasions with hundreds of unrelated calling party numbers representing interstate and intrastate interexchange traffic to the called party number. (See, e.g., Direct Testimony of William L. Wiley at pages 14 and 15 and Sprint's Response to Staff's Interrogatory No. 21) The CDRs that Sprint has provided to KMC, including the September 10, 2004 records, the Agilent records for the week of September 15-21, 2003 and the 27 day random sample of CDRs containing one day of records per month from November 2002 through March 2005, show multiple instances of the activity described above. Additional call detail records from the relevant time period would be simply redundant, as they merely show that the same behavior continued throughout the relevant period. In fact, KMC does not dispute that the records were sufficient for KMC to identify the KMC customer that KMC alleges is primarily responsible for the traffic Sprint has identified, which KMC alleges is an enhanced services provider exempt from access charges. It is interesting to note that KMC was able to reach this conclusion based on the single day of records (Sept. 10, 2003) Sprint provided KMC prior to the filing of Sprint's Complaint, demonstrating that all of the additional records Sprint has subsequently provided merely served to confirm what the

single day of records demonstrated.

CONCLUSION

KMC's Motion for Reconsideration fails to demonstrate a point of fact or law that the prehearing officer overlooked or failed to consider in rendering his decision on KMC's Motion to Compel. Commission precedent supports the ruling that Sprint is not required to produce any additional call detail records as requested by KMC. In addition, Sprint has fully and completely responded to KMC's discovery requests in accordance with the applicable discovery rules as set forth in Sprint's Response to KMC's Motion to Compel and in this Response to KMC's Motion for Reconsideration. Therefore, KMC's Motion for Reconsideration should be denied.

RESPECTFULLY submitted this 5th day of July 2005.



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Sprint-Florida, Incorporated)	Docket No. 041144-TP
Against KMC Telecom III LLC,)	
KMC Telecom V, Inc. and KMC Data LLC,)	
for failure to pay intrastate)	
Access charges pursuant to its interconnection)	
Agreement and Sprint's tariffs and for violation of)	Filed: May 26, 2005
Section 364.16(3)(a), Florida Statutes.)	

SPRINT FLORIDA, INCORPORATED'S
RESPONSE TO KMC'S MOTION TO COMPEL

Sprint-Florida, Incorporated (hereinafter "Sprint") hereby files its Response to the Motion to Compel filed by KMC Telecom III LLC, KMC Telecom V, Inc. and KMC Data, LLC (hereinafter, collectively, "KMC") on May 19, 2005.

General Response to Motion to Compel

Sprint has consistently endeavored to timely and fully responded to each of KMC's interrogatories and production of document requests, to the extent the requests sought relevant information not subject to proper objections under the applicable discovery rules.¹ To the extent a proper objection applies, Sprint timely noted the objection consistent with the applicable rules.² Sprint believes that it has provided complete responses and has fully complied with the discovery rules. In fact, in many instances Sprint believes it has gone beyond its legal obligation to respond, taking the extra effort to understand and provide information in response to KMC's requests that

¹ See Section 120.569, F.S., and Rule 28-106.206, F.A.C. The applicable Rules of Civil Procedure are Rules 1.280 and 1.400 (hereinafter "discovery rules").

² KMC's First Set of Interrogatories and First Request for Production of Documents were served prior to the issuance of the Order on Procedure, so that the time frame for objections and responses are those time frames set forth in Rule 1.340 and 1.350 of the Florida Rules of Civil Procedures. These time frames require objections and responses to be service within 30 days of the discovery requests.

were at times ambiguous and were frequently duplicative and overlapping with other discovery requests. To Sprint it appears that a major source of KMC's apparent belief that Sprint has not responded adequately lies in the voluminous and technical nature of the documents that KMC has requested and that Sprint has provided. While Sprint has attempted to the best of its ability to respond in a manner that will assist KMC in reviewing and understanding the documents, Sprint fears that KMC has been unable to understand much of the information that has been provided. Sprint recognizes its obligation under the applicable discovery rules to provide relevant documents as requested; however, Sprint does not believe it has an obligation to assist KMC in its evaluation of these documents in the manner that KMC appears to contemplate in its Motion to Compel. KMC chose to frame its discovery requests broadly, i.e., asking Sprint to provide all supporting documentation or everything relied on to support its answers. Sprint diligently has attempted to comply. To the extent KMC has additional questions regarding what Sprint has provided, these questions are appropriately addressed through additional discovery and/or depositions.

In the subsequent specific responses to KMC's Motion, Sprint will detail all of the responsive information that Sprint has provided regarding each specific Interrogatory and POD.³ This detail will show that Sprint has fully and completely responded to KMC's discovery requests in compliance with the applicable discovery rules. Therefore, KMC's Motion to Compel as it relates to each and every discovery response should be denied.

³ Because Commission staff has been served with all interrogatory and POD responses, Sprint has not attempted to recreate and attach the voluminous information provided to this Response. Rather, Sprint will refer to the information already provided to staff and KMC.

Responses Related to Individual Discovery Requests

Call detail records

KMC has asked the Commission to compel Sprint to provide all of the call detail records for the two-year plus span of time that Sprint claims KMC was improperly terminating access traffic to Sprint over local interconnection trunks.⁴ Sprint already has explained the process that Sprint must go through to retrieve the historic call detail records for the relevant period of time in its initial Response and Supplemental Responses to POD No. 1. In further explanation, Sprint collects approximately 120 million call detail records for multiple customers each day. These individual records are stored on one to two tapes for each day of records (because of the time frames captured on the tapes more than one tape may represent the records for a single calendar day). Therefore, the records for the two plus years for the traffic that is the subject of Sprint's complaint would require more than 800 tapes to be pulled and reviewed to identify KMC records. As Sprint as explained, this process takes one to two days for each day of records. Significant time and costs would be incurred to pull and review all of these records. Specifically, for Sprint to pull all of the records that KMC has requested it would take at least 18 months and cost a minimum of \$362,000 dollars.⁵

To date Sprint has provided KMC with the following call detail information:

⁴ KMC has asked multiple times for what amounts to the same information in several interrogatories and PODs (e.g., Interrogatory Nos. 6 and 7 and POD Nos. 1, 7, 10, 12, 15, and 17) though the requests have been couched in slightly different terms. When the records have already been provided in response to a previous request, Sprint has properly responded by referring to the applicable response.

⁵ KMC is under the mistaken impression that Sprint itself reviewed each day of call detail records. That is not the case. Sprint did not use the individual call detail records to calculate the amount of money KMC owes Sprint for the access traffic that KMC improperly terminated over local interconnection trunks. Rather, as Sprint has repeatedly explained, the methodology it used to calculate the charges involved a review of monthly SS7 summary reports extracted into an Access Database. (See Sprint's Supplemental Response to KMC Interrogatory No. 15 provided on March 22, 2005.)

CDR Records for September 10, 2003 (which were provided to KMC prior to the initiation of the Complaint as part of Sprint's attempt to work with KMC to resolve the Complaint)

All CDR records underlying the Agilent study (See CD labeled "Agilent CDR Records" provided in response to KMC POD No. 18 (c), also provided as Exhibit WLW-3 to William L. Wiley's Direct Testimony)

A statistically valid, 27 day random sample of CDR records spanning the two year period (See CDs provided on February 21, March 17 and April 7, 2005, and labeled KMC CDR Records, 20031024-20030711 GMT KMM CLEC CDRs, 20040202-20031118 EST KMM CLEC CDRs, and KMC CLEC 20030606-20021124, respectively, also provided as Exhibit WLW-5 and Revised Exhibit WLW-5, to William L. Wiley's Direct and Rebuttal Testimonies).

Sprint's responses to KMC's request for the call detail records fulfill Sprint's obligations to respond under the applicable discovery rules. In fact, by producing the 27 day random sample of KMC call detail records, Sprint has gone beyond what the Commission determined was necessary to comply with the rules in the one previous proceeding in which a similar discovery dispute was addressed. See, *In re: Dade County Circuit Court referral of certain issues in Case No. 92-11654 (Transcall America, Inc. d/b/a ATC Long Distance vs. Telecommunications Services, Inc. and Telecommunications Services, Inc. vs. Transcall America, Inc. d/b/a ATC Long Distance)* that are within the Commission's Jurisdiction, Docket No. 951232, Order No. PSC-98-0954-PCO-TI, issued July 15, 1998 and Order No. PSC-98-1058-PCO-TI, issued August 7, 1998. In that case the Commission recognized that call detail records in their raw form contain records relating to numerous customers that are confidential and that Sprint is prohibiting from making public under s. 364.24, Florida Statutes and also that the other customers' records are not relevant to a dispute involving a single customer. The Commission further determined that records pertaining to a single customer are not existing records, but must

be created in order to be produced and that such preparation is beyond the scope of what is required under the applicable discovery rules. Specifically, in the August 7th Order denying TSI's Second Motion to Compel, the prehearing officer ruling on the Motion stated "It is not proper to seek production of documents that do not exist and would, therefore, require preparation." Because the call detail records involving only TSI's traffic did not exist independent of the irrelevant records involving other customer's traffic, the prehearing officer ruled that "I shall not require *Transcall* to prepare a record or computer file that does not currently exist." The *Transcall* case also supports the sufficiency of Sprint's provision of a subset, rather than all of the call detail records in that the staff audit and testimony in that case was based on a review of only a portion of the total number of call detail records.

As explained above, the call detail records at issue here also contain confidential information for multiple customers. In order to produce records related to KMC only, Sprint must "prepare" the records, which is a lengthy and time consuming process as described above. Sprint has provided KMC with all the KMC only records that were already in existence (i.e., the Agilent records and the September 10, 2003 records) and has also provided to KMC the KMC only records that Sprint prepared for the purpose of submitting them as evidence in this case. To require Sprint to prepare and produce any additional CDR records goes beyond the scope of the discovery rules, as the Commission properly found in the *Transcall* case.⁶ Therefore, KMC's Motion to Compel the additional CDR records should be denied.

⁶ In the *Transcall* case, *Transcall* apparently offered TSI the ability to review the call detail records. Such a process would not be workable for the number of records involved in this case. Sprint has calculated that it would take KMC 18 months, at a cost of \$79,300 to come to the location where the records are kept and conduct the necessary review.

Interrogatory 6(b) and Production of Documents No. 6

In Interrogatory No. 6(b) KMC requests all the information forming the basis for Sprint's belief that KMC was altering or changing charge party numbers. This is an example of one of the many requests from KMC that is duplicative or overlaps with several other requests. Sprint formed its belief that KMC was manipulating the charge party number in some manner based on its analysis of the call detail information it collects for all traffic as described above. Therefore, the response to POD No. 1 was responsive to Interrogatory No. 6. In addition, Sprint engaged Agilent to verify its own analysis. The information related to the Agilent study was requested and provided in Sprint's Response to POD No. 18. Sprint provided a narrative explanation of how Sprint arrived at its conclusions in its Response to Interrogatory No. 6. This response represents the basis of Sprint's claims at that time. It should be noted that subsequent information provided by KMC to Sprint, including testimony, has clarified the issues for Sprint, in that KMC has admitted that the repetitive charge party numbers that Sprint had noticed were, in fact, numbers assigned by KMC and programmed by KMC into its switch for traffic KMC received from its Customer X. However, at the time Sprint responded to the discovery, Sprint was not aware of these specific actions by KMC. Because Sprint fully and completely responded to KMC's Interrogatory No. 6, KMC's Motion to Compel as it relates to this Interrogatory should be denied.

KMC also claims that Sprint has not fully responded to KMC's request for POD No. 6, which contains an unspecified request for "all documents identified or relied on in Response to Interrogatory No. 6." While Sprint had noted its objections to any request that was "overly broad etc." (see Sprint's generally applicable objection No. 4 on page 2

of Sprint's Responses and Objections filed on February 21, 2005) Sprint nevertheless endeavored in good faith to provide any documents applicable to Interrogatory No. 6 that were not already provided in response to other duplicative and overlapping requests. In response to POD No. 6, Sprint provided the following:

Power point presentation relating to Correlated Call Records (CCR).

CD named "CCR041905" which contains the correlated call records underlying the power point presentation. (these records initially were provided as part of Response to Interrogatory No. 92, which was provided in response to KMC's "catch all" POD No. 15 asking for "any records that had not otherwise been provided in other discovery responses" and were provided again on CD in Sprint's Supplemental Response to POD No. 15 filed on March 22, 2005)

Multiple confidential but nonprivileged e-mails and attachments to those e-mails, provided on March 17

Privilege log, detailing each e-mail string, the subject of the e-mails, each individual including in the e-mail distribution and the name of the Sprint attorney(s) initiating or requesting the communication, provided in Sprint's Supplemental Response to POD Nos. 6, 7, 15, 17 and 18, filed on March 22, 2005.

Contrary to KMC's assertion in paragraph 20 of its Motion to Compel, Sprint provided more than a log of privileged e-mails that would otherwise be responsive. Rather, Sprint provided voluminous non-privileged, though confidential, e-mails and related attachments (including voluminous attachments produced on a CD accompanying the e-mails) that were responsive to POD No. 6 and related POD requests. Here again, KMC had requested similar and intertwined information relating to Sprint's complaint in several interrogatory and POD requests, including POD No. 6, POD No. 7, POD No. 17 and POD No. 18. Sprint practically was not able to separate the communications according to which interrogatory they were responsive to because, from Sprint's

perspective, information relevant to these requests were inter-related and intertwined in the internal communications.

These records, combined with the call detail records otherwise provided to KMC as detailed above, constitute the entire body of documents in Sprint's possession that are fully responsive to this request.⁷ Therefore, KMC's Motion to Compel as it relates to Sprint's responses to Interrogatory No. 6(b) and POD No. 6 should be denied.

Interrogatory No. 7 and POD No. 7

In Interrogatory No. 7 KMC asks Sprint to describe the actions taken by Sprint to trace the access traffic that KMC improperly terminated to Sprint over its local interconnection trunks. POD No. 7 broadly requests any documents identified or relied on responding to the Interrogatory. As explained above, this question is intertwined with and overlaps several other interrogatories and POD requests, so that information that is responsive to one, is also responsive to many. Nevertheless, Sprint provided a narrative response to the Interrogatory and in response to the POD provided the following documents:

Power Point presentation labeled IXC Study

Correlated call records labeled CCR041905 (described above)

Unprivileged confidential e-mails

Privilege log (also provided in response to POD Nos. 6, 15, 17 and 18)

Sprint's response to Interrogatory No. 7 fully describes the process Sprint

⁷ However, in its generally applicable Objection No. 10 of Sprint's objections filed on February 21, 2005, Sprint notes the limitations of its ability to represent that it has provided every possible document relevant document and Sprint's commitment to conduct a diligent and reasonable search in order produce relevant documents, which Sprint has done in an attempt to fully and completely respond to KMC's discovery requests.

undertook as the basis of its Complaint. This response and the records described above, combined with other records provided in response to similar and overlapping requests, including the call detail records otherwise provided to KMC as explained above, constitute the entire body of documents in Sprint's possession that are fully responsive to this request. Therefore, KMC's Motion to Compel as it relates to Sprint's responses to Interrogatory No. 7 and POD No. 7 should be denied.

Interrogatory No. 11 and POD No. 10

In this Interrogatory, KMC asks Sprint to "describe the call detail records and SS7 signaling information" related to the access traffic that Sprint was able to identify more specifically because it originated by a Sprint end user. Once again, this Interrogatory requests information that is duplicative of and overlaps previous questions, particularly Interrogatories No. 6 and 7.

Sprint provided a response specifically to this Interrogatory in which Sprint describes the process it used to correlate and review the records. Sprint believes this response is sufficient, as the process for each individual call record is the same and, therefore, a general description of the process used can be applied to all the records. Nevertheless, to the extent that KMC's Motion to Compel arises out of its lack of understanding of what is depicted on the call detail records, Sprint is filing a Supplemental Response to Interrogatory No. 11 that provides a step-by-step description of what information is provided on the call record at each stage of the transmission. Time constraints in responding to this Motion to Compel prevent Sprint from being able to provide the supplemental response simultaneously with this Response; however, Sprint will provide the Supplemental Response on May 27.

In POD No. 10, KMC asks, once again, for the call detail records underlying Sprint's analysis. Sprint has provided these records in POD No. 1 as discussed above. There are no other records responsive to this request. Sprint's Response to Interrogatory No. 11 and the documents it has provided KMC in response to POD No. 10 as well as numerous other duplicative and overlapping document requests are fully responsive to and in compliance with Sprint's discovery obligations. Therefore, KMC's Motion to Compel as it relates to Sprint's responses to Interrogatory No. 11 and POD No. 10 should be denied.

Interrogatory No. 15

Interrogatory No. 15 asked Sprint to describe its calculation of the amount Sprint alleges KMC owes for the access traffic Sprint alleges KMC improperly terminated to Sprint over local interconnection trunks. Sprint first responded to the Interrogatory on February 21, 2005 with a general explanation of the process used. At KMC's request, Sprint provided a more detailed explanation in its Supplemental Response to the Interrogatory provided on March 22, 2005. This Response goes through a step-by-step explanation of the process and methodology Sprint used to calculate the access charges that are due. In addition, Sprint provided the detail of the calculations in an excel spreadsheets identified in the Supplemental Response to Interrogatory No. 15.⁸ KMC appears to be asking Sprint to describe its calculations on a call by call basis, which is unreasonable, unnecessary and would be patently unduly burdensome to Sprint. Sprint's

⁸ In paragraph 35 of its Motion to Compel, KMC alleges that Sprint has not provided SS7 Monthly Summary Reports relevant to Sprint's Complaint. While Sprint believes that these reports were included among the voluminous documentation that has already been provided to KMC, Sprint will continue to review its responses and to the extent Sprint discovers that these documents have not been provided in their entirety, Sprint will file these documents as a Supplemental Response to POD No. 15.

response is a full and complete response to the question and is entirely compliant with the applicable discovery rules, therefore, KMC's Motion to Compel as it relates to Interrogatory No. 15 should be denied.

Interrogatory No. 16 and POD No. 12

Interrogatory No. 16 asks Sprint to explain its methodology for calculating the amount of reciprocal compensation that Sprint overpaid as a result of KMC's mischaracterization of access traffic as local traffic. The related POD No. 12 asked for all documents identified or relied on in responding to Interrogatory No. 16. First, it should be noted that this calculation is a derivative of the process used to jurisdictionalize the traffic for the purpose of determining the amount of the access charges that were avoided. Therefore, the same records are responsive to this Interrogatory and related POD as are responsive to the several other duplicative and overlapping requests by KMC. In addition, Sprint provided an excel spreadsheet detailing the billing calculations. In response to POD No. 12, Sprint also provided internal e-mails related to Sprint's identification and calculation of Sprint's overpayment of reciprocal compensation. KMC appears to be asking Sprint to describe its calculations on a call by call basis, which is unreasonable, unnecessary and would be patently unduly burdensome to Sprint. Sprint's response to Interrogatory No. 16 and the documents provided both directly in response to POD No. 12 and in response the several duplicative and overlapping requests are full and complete responses to the requests and are entirely compliant with the applicable discovery rules, therefore, KMC's Motion to Compel as it relates to Interrogatory No. 16 and POD No. 12 should be denied.

POD No. 16

POD No. 16 asks Sprint to “produce all internal records related to Sprint’s production of the information contained in Sprint_CDR_Translations.” Frankly, Sprint did not understand what documents this request was intended to encompass that were different from the call detail records requested in numerous other duplicative and overlapping requests from KMC. In an effort to respond to this request, Sprint tried to identify anything that it had provided KMC that was denominated Sprint_CDR_Translations, to determine what other documents the request might encompass. The only thing we could find that KMC might be referring to was a table labeled SS& CDR Translations in a document labeled KMC_CDR_layout_for_Sept_10_2003.xls, which is the September 10 CDR information provided to KMC prior to Sprint filing its Complaint. This document is nothing more than a description of the fields contained in the CDR records. As such, there are no additional documents that relate to that file.

In response to paragraph 42 of KMC’s Motion, KMC apparently misinterpreted the basis and breadth of Sprint’s objection. Sprint objected only to the extent privileged documents were being requested. Subsequently, Sprint provided a privilege log that identifies all of the documents that Sprint believes are responsive to KMC’s discovery request that are privileged. There are no other privileged documents responsive to any of KMC’s requests that are not listed on the privilege log. Since the only documents that Sprint could ascertain might be responsive to this request were the call detail records provided in Response to POD No. 1 (discussed previously in this Response to KMC’s Motion), Sprint has adequately responded to POD No. 16 in full compliance with the

applicable discovery rules. Therefore, KMC's Motion to Compel as it relates the POD No. 16 should be denied.

POD No. 17

POD No. 17 asks Sprint to produce copies of Sprint's analysis using the Agilent system referred to in paragraph 13 of Sprint's Complaint. This is another duplicative and overlapping request, as these documents are the same documents as Sprint has produced in response to POD No. 1, POD No. 6 and POD No. 7. It may be helpful to distinguish Sprint's ongoing internal use of the Agilent business intelligence system to analyze SS7 records from the KMC study conducted by Agilent for Sprint that is provided in Sprint's Response to POD No. 18. Sprint uses Agilent software to compile and interpret the raw SS7 records that are collected at its switch. This software produces the call detail records that KMC has requested in multiple POD requests. These same call detail records are the records that Sprint addresses in its Response to POD No. 1 and in its discussion above relating to KMC's Motion to Compel additional responses to POD No. 1.

As far as paragraph 46 of KMC's Motion to Compel, again, Sprint only objected to the extent POD No. 17 requested privileged documents. All of the relevant privileged documents that are responsive to POD No. 17 are included in the privilege log provided, the sufficiency of which is discussed earlier in this response. Sprint has responded fully and completely and in compliance with the applicable discovery rules in its response to Interrogatory No. 17. Therefore, KMC's Motion to Compel as it relates to Sprint's Response to POD No. 17 should be denied.

POD No. 18

POD No. 18 asks for various documents related to the Agilent Study Sprint

referred to in its Complaint (and submitted as Exhibit WLW- attached to the direct testimony of William L. Wiley.) In response to this POD request, Sprint provided the following documents:

A copy of a brochure entitled "Agilent OSS Revenue Assurance"

A copy of a brochure entitled "Agilent acceSS7 Business Intelligence"

Agilent Access Bypass Study Results (also provided prefiled Exhibit WLW-3) (portions confidential)

Sprint/Agilent Master Agreement (Confidential)

Agilent SOW for the KMC Study (Confidential)

KMC Agilent CDRs (on confidential CD only)

Confidential but nonprivileged e-mails discussing the Agilent study and its results

E-mails identified on Sprint's privileged log

Contrary to KMC's assertion in paragraph 52, Sprint did not "glibly" refer to call detail records provided in response to other requests, but provided a separate CD, appropriately labeled, that contains all of the call detail records used by Agilent in conducting its study. In response to KMC's discussion of Sprint's claim of privilege in paragraph 51, again, KMC misinterprets the extent of Sprint's claim. As stated previously privilege was not asserted for all documents, but only insofar as it applied and any privileged documents responsive to this request are included on the privilege log discussed previously in this Response to KMC's Motion. As far as KMC's claims that Sprint failed to provide "preliminary analysis or preliminary versions of the Agilent study (paragraph 51 of KMC's Motion to Compel), Sprint asserts that there are not such documents in Sprint's possession and that is why no such documents were provided.

Sprint did provide correspondence with Agilent, to the extent it was not privileged in the internal e-mails provided in response to the several PODs requesting them. Sprint has responded fully and completely and in compliance with the applicable discovery rules in its response to POD No. 18. Therefore, KMC's Motion to Compel as it relates to Sprint's Response to POD No. 18 should be denied.

Interrogatory No. 36 and POD No. 25

Interrogatory No. 36 asks if Sprint has made any claims related to the delivery of access traffic over local interconnection trunks against any other LEC for traffic in the Ft. Myers or Tallahassee LATAs. Sprint responded with the name of a CLEC and an explanation of the basis of the claim and the status of the claim. As far as the related POD No. 25 (requesting any documents identified in or relied on in Interrogatory No. 36), contrary to KMC's claims in paragraph 56 of its Motion to Compel, Sprint did not fail to identify documents. Rather Sprint responded that it had documents but due to their highly confidential and competitively sensitive nature (i.e., they contain customer information concerning a competitor of KMC), Sprint would not provide copies but would, instead, make them available for viewing at Sprint's Tallahassee offices. KMC has never contacted Sprint to arrange a time to view these documents. Sprint's offer is completely consistent with Rule 1.350 of the Florida Rules of Civil Procedure which requires a respondent to a production request to allow inspection of a document in a reasonable manner at a reasonable time and place.

KMC also alleges that Sprint has made reference to investigations it has made of multiple other CLECs related to the avoidance of access charges. While this is correct, none of these other CLECs were encompassed by the strict terms of the request (i.e., that

the claims involved traffic terminated to Sprint in Tallahassee or Ft. Myers). Regardless of KMC's misunderstanding of the completeness of Sprint's response, Sprint has responded fully and completely and in compliance with the applicable discovery rules in its response to Interrogatory No. 36 and POD No. 25. Therefore, KMC's Motion to Compel as it relates to Sprint's Response to POD No. 18 should be denied.

POD No. 15

KMC's POD No. 15 is a "catch all" requesting Sprint to provide any relevant documents it has not otherwise provided in responding to KMC's POD requests. While this request is undeniably overbroad and ambiguous, in its attempt to provide all relevant documents, Sprint has responded to POD 15 by including numerous documents that support and are relevant to Sprint's claims, including correlated call records and detailed supporting information for each month of these records through May 2004 (see documents entitled Sprint's Response to Interrogatory No. 92 from Docket No. 031047, Bate Stamp pages 324-546. These documents contain much of the supporting information KMC is complaining has not been provided in this Motion to Compel.

Conclusion

Sprint has provided detailed responses to each of KMC's discovery responses and provided the voluminous relevant documentation that is responsive to KMC's POD requests. Sprint has responded fully and completely and to the best of its ability to each of KMC's Interrogatories and PODs and has fully complied with the applicable discovery rules. Pursuant to these rules and consistent with Commission precedent Sprint is not required to prepare and produce all of the millions of call detail records that span the two years of Sprint's complaint and it would be unduly burdensome and expensive for Sprint

to do so, as set forth in detail above.

To the extent that KMC's Motion to Compel indicates a lack of understanding of what Sprint has provided, Sprint has either made clarifications in this response to assist KMC in understanding the information provided or Sprint is filing supplemental responses in an attempt to alleviate this lack of understanding as noted herein. KMC has no legitimate basis for its Motion to Compel given Sprint's more than sufficient responses to KMC's requests. Therefore, KMC's Motion to Compel should be denied as it relates to each and every interrogatory and POD request set forth in its Motion.

WHEREFORE, Sprint asks the Commission to deny KMC's Motion to Compel.

RESPECTFULLY SUBMITTED this 26th day of May 2005.



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20. On pages 8 and 9 on KMC witness Pasonski's rebuttal testimony, he asserts that KMC has not received sufficient data from Sprint to respond to the calculation of access charges by Sprint. Has Sprint provided KMC with sufficient data to respond to the calculations? If so, list what was provided. If not, why not?

Response: Yes, Sprint-Florida, Inc. has provided KMC with sufficient data to support the calculation of the access charges. The following files were provided:

- SS7 CDRs for September 10, 2003 were provided on February 24, 2004.
- Monthly billing adjustment summaries for July 02 – Dec 03 were provided on February 24, 2004.
- Resent SS7 CDRs with duration for September 10, 2003 data provided on March 31, 2004.
- Responses to KMC questions dated March 22, 2004 regarding the September 10, 2003 CDR data were provided on March 31, 2004.
- Attachment 4 Summary of Intrastate Access Charges Due from KMC to Sprint for the KMC Access Arbitrage Complaint Filing provided on September 27, 2004.
- KMC Complaint Summary file which contains the following information sent in response to KMC's First Set of Interrogatories were provided on February 21, 2005:
 - SS7 MOUs
 - Billed Volume Trend
 - No CPN MOU
 - ChPN diff CPN – Amount of traffic where the SS7 minutes for the Charge Party Number differs from the Calling Party Number comparing to total billed minutes by jurisdiction.
 - ChPN 850 and 239 – Amount of traffic where the SS7 minutes for the Charge Party Number have the same NPA 850 and 239.
 - FL 27 – Monthly MOU and Revenue breakdown for Tallahassee, FL Trunks to support Backbilling adjustment.
 - FL 39 – Monthly MOU and Revenue breakdown for Ft. Myers, FL Trunks to support Backbilling adjustment.
 - July 02 to Current – Summation of MOU and Revenues for FL 27 and FL 39 to support total backbilling adjustments.
 - Jul 02 to Jun 03 Impact - Summation of MOU and Revenues for FL 27 and FL 39 to support total backbilling adjustments prior to Bill and Keep.
 - Interstate – Summation of the Interstate Revenues for FL 27 and FL 39 to support the Backbilling adjustments.
 - Intrastate – Summation of the Intrastate Revenues for FL 27 and FL 39 to support the Backbilling adjustments.
- KMC PLU Backbilling files detail how the monthly billing adjustments were calculated which were sent in response to KMC's First Set of Interrogatories were provided on February 21, 2005.
- SS7 CDRs on multiple CDs for the following days in response to KMC's First Set of Interrogatories POD #1 filing sent on February 21, 2005, March 17, 2005 and April 7, 2005, :
 - November 24, 2002

- December 9, 2002
 - January 4, 2003
 - February 13, 2003
 - March 29, 2003
 - April 17, 2003
 - May 26, 2003
 - June 6, 2003
 - July 11, 2003
 - August 31, 2003
 - September 12, 2003
 - October 24, 2003
 - November 18, 2003
 - December 23, 2003
 - January 28, 2004
 - February 2, 2004
 - March 19, 2004
 - April 7, 2004
 - May 11, 2004
 - June 5, 2004
 - July 16, 2004
 - August 21, 2004
 - September 4, 2004
 - October 10, 2004
 - November 23, 2004
 - December 20, 2004
 - January 1, 2005
- CCR041905 for SS7 Correlated Call Records were provided to identify the IXC's that sent traffic to KMC. This was in response to the Motion to Compel, Interrogatory #92, POD #15, and supplemental response to POD #15 on March 22, 2005.
 - KMC Balance as of 3-25-05 file contains charges, payments, adjustments, and disputes for KMC in a supplemental response to KMC's First Set of Interrogatories were provided on April 7, 2005.
 - Local Interconnection Agreements were provided with the original complaint filed September 24, 2004..
 - Rebuttal Aggarwal exhibits: RA-1 showed adjusted billed MOU for FL 27 and FL 39 and RA-2 provided calculation process and monthly billing adjustment summaries were sent on May 10, 2005.

In addition Sprint has explained in detail the methodology it used to calculate the access charges due in both testimony and discovery responses. See (e.g. Rebuttal Testimony of Ritu Aggarwal and Sprint's Responses and Supplemental Responses to KMC's Interrogatory #15)