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Matilda Sanders

From: Whitt, Chrystal [CC] [Chrystal.Whitt@mail.sprint.com]
Sent: Friday, July 15, 2005 4:42 PM
To: Filings@psc.state.fl.us
Subject: 041144-TP Sprint's Response to KMC's Motion to Compel Responses to KMC's 4th Rogs and 5th POD's
Attachments: Sprint's Response to KMC's Motion to Compel Responses to KMC's 4th rogs 5th pods.pdf

Filed on behalf of:

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July 15, 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 are the original and 15 copies of Sprint's Response to KMC's Motion to Compel Responses to KMC's 4th Interrogatories and 5th POD's to Sprint.

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

Please acknowledge receipt of this filing by stamping and initialing a copy of this letter and returning same to my assistant. If you have any questions, please do not hesitate to call me at 850/599-1560.

Sincerely,

Susan S. Masterton

Enclosure

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**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 15th day of July, 2005 to the following:

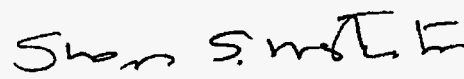
Division of Legal Services
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Marva B. Johnson/Mike Duke
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Tallahassee, FL 32302



Susan S. Masterton

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 15, 2005 |
| Section 364.16(3)(a), Florida Statutes. |) | |

SPRINT FLORIDA, INCORPORATED'S RESPONSE
TO KMC'S MOTION TO COMPEL RESPONSES TO
FOURTH SET OF INTERROGATORIES AND
THE FIFTH REQUEST FOR PRODUCTION OF DOCUMENTS

Sprint-Florida, Incorporated (hereinafter "Sprint") hereby files its Response to the Motion to Compel Response to Fourth Set of Interrogatories and Fifth Request for Production of Documents (hereinafter "Third Motion to Compel") filed by KMC Telecom III LLC, KMC Telecom V, Inc. and KMC Data, LLC (hereinafter, collectively, "KMC") and served on Sprint by electronic mail on July 8, 2005.

Introduction

Sprint has consistently endeavored to timely and fully respond 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. Sprint believes that it has provided complete and meaningful responses and has fully complied with the discovery rules in responding to KMC's Interrogatories and PODs. However, KMC did not contact Sprint to discuss its

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").

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perceived deficiencies with the objections or answers Sprint provided to the Fourth Set of Interrogatories and the Fifth PODs prior to filing its Third Motion to Compel, as is generally expected, if not required. Had KMC contacted Sprint at the time Sprint provided its initial objections, the parties might have been able to resolve at least some of the disputed issues without the need for Commission intervention.²

In the subsequent responses to the specific allegations in KMC's Third Motion to Compel, Sprint will explain the basis of its objections, where applicable, and describe the responsive information that Sprint has provided regarding each specific Interrogatory and POD.³

Responses Related to Individual Discovery Requests

Interrogatory No. 83 and POD No. 74

Interrogatory No. 83 asks a series of questions concerning the motivation and rationale behind Exhibit JRB-2, attached to the Rebuttal Testimony of James R. Burt, as well as the methodology used by Sprint to prepare the Exhibit and whether Sprint reviewed any other information in preparing Exhibit JRB-2 that was not included in the Exhibit. The investigation resulting in the identification of the six calls presented on Exhibit JRB-2 was initiated at the request of Sprint attorneys subsequent to the filing of direct testimony in this proceeding for information about what Sprint's records show to rebut the testimony of KMC witnesses that the traffic that is the subject of Sprint's Complaint is "enhanced services" traffic and to support the direct testimony of Mr. Burt that the traffic is POTS traffic (see Burt Direct Testimony at page 17, lines 9-16)

² Pursuant to the Order Establishing Procedure, the intent of requiring objections to be filed 10 days after a discovery request is received is to "to reduce delay in resolving discovery disputes."

³ Sprint's Responses to KMC's Fourth Interrogatories and Fifth PODs are part of the record of this proceeding, specifically they are contained in Hearing Exhibit 2 (Sprint-2).

Attorney client communications relating to this investigation included primarily verbal discussions among Sprint's attorneys, witnesses and litigation support staff concerning the strategy for developing rebuttal testimony, as well as some e-mail communications exchanged between Sprint's witnesses, litigation support staff and attorneys preparatory to filing of Exhibit JRB-2.

Sprint objected to Interrogatory No. 83 (and POD No. 74) on the grounds that it requests materials that were prepared specifically for trial (i.e., the documents reviewed but not provided in preparing Exhibit JRB-2⁴) and that it requests information concerning the mental impressions, conclusions or legal theories of Sprint's attorneys or other representatives concerning the litigation. For instance, KMC asks Sprint why and how the six calls that were included in the Exhibit were selected. Since the information that is included in Exhibit JRB-2 was collected and compiled by Sprint witnesses and litigation support staff under the supervision of Sprint's counsel for the purposes of preparing rebuttal testimony in this proceeding, a response to these questions patently involves an improper inquiry into the mental processes and litigation strategies of Sprint's attorneys and witnesses in the preparation of their case. In addition, information or documentation Sprint reviewed but that Sprint decided not to include in the Exhibit and information about why Sprint decided not to include the information falls squarely within the trial preparation materials protected by Rule 1.280 b(3).⁵ Clearly, the information KMC seeks, as it relates to Sprint's research and assessment of the value of documents it examined in

⁴ From its pleading, KMC appears to believe that the information that was provided in Exhibit JRB-2 was the result of sample calls made by Sprint (KMC Motion at paragraph 9). Even if that were true the information would still be protected as work product/trial preparation materials, but, in fact, the information was produced as a result of Sprint's review of the April 19, 2004 correlated call records already provided to KMC in response to POD No. 15 and related Sprint customer invoices. No sample calls were made.

⁵ While Sprint believes this information is protected and, therefore, not discoverable, in fact, there are no such documents as is reflected in the Response provided in Attachment A.

the course of preparing its case, are privileged and exempt from discovery pursuant to Rule 1.280(b)(3), Florida Rules of Civil Procedure. See, *Procter & Gamble v. Swilley*, 462 So. 2d 1188 (Fla. 1st D.C.A. 1985) ⁶

While Sprint believes that as the interrogatories as framed appear to improperly inquire into the mental processes and trial strategies involved in preparing JRB-2 (which means that Sprint's objection and assertion of attorney client, work product and trial preparation materials privileges are valid) to the extent KMC's inquiries might be construed to relate to the nature of the evidence itself (i.e., the calls identified in Exhibit JRB-2) Sprint is providing appropriate Responses attached hereto as Attachment A.

Sprint's objections and claims of privilege based on character of the information requested as attorney client, work product or trial preparation materials are appropriate. In addition, Sprint has provided a Supplemental Response to the extent the inquiries might have been intended to properly relate to the nature of the evidence itself. Sprint has fully complied with the applicable discovery rules, therefore, KMC's Motion to Compel as to Interrogatory No. 83 and POD No. 74 should be denied.

Interrogatory No. 87

Interrogatory No. 87 involves KMC's request for information about trend analyses Sprint performs concerning carriers and IXCs other than KMC. While answering Interrogatory 87(a) in the affirmative that Sprint conducts such analyses, Sprint objected to providing the specific details of the information it has collected because it relates to other carriers and IXCs. Such information is highly confidential, competitively sensitive information that Sprint is required by law to kept confidential

⁶ The *Proctor* case also holds that for the substantial need/undue hardship exception to the work product privilege cannot be established through unsworn analysis of the party's attorney and/or a bare assertion of need and undue hardship. 462 So. 2d at page 1194

(§364.24, F.S.). In addition, this information relating to the numerous other carriers that terminate traffic to Sprint is not relevant to this Complaint proceeding between KMC and Sprint.

In its Response to Interrogatory No. 87(d), Sprint stated that there are no specific responsive documents other than documents that have already been provided to KMC (i.e., documents concerning the results of Sprint's trend analyses as they relates to KMC and information and documents concerning other carriers in Florida with whom Sprint has pursued similar disputes.) In reviewing its response to Interrogatory No. 87(d), Sprint now realizes that its response was incomplete and that it should have stated that there are no other RELEVANT documents other than the documents that have already been produced.

As Sprint explained in its response to Interrogatory No. 87(a), Sprint does conduct trend analyses of many, if not most, of the carriers that terminate local and interexchange traffic to Sprint. These analyses are produced in the form of high level monthly summary documents that include information relating to the volume of terminated traffic on a statewide level of all of the carriers in all of the states in which Sprint operates as an ILEC. Clearly, this highly sensitive customer information is not relevant to Sprint's Complaint against KMC, which involves traffic with specific characteristics terminated over specific local interconnection trunks KMC has with Sprint in the Ft. Myers and Tallahassee service areas. Therefore, Sprint properly objected to providing these records for review by KMC, a competitor of the carriers and IXCs whose traffic volumes are depicted in the trend analyses.

In response to KMC's allegations that Sprint has produced confidential customer

information only when it suits Sprint's purposes, (KMC Motion at paragraph 17) Sprint consistently has produced on its own initiative customer information in this Complaint, but only when that information has related directly to the KMC traffic that is at issue in this proceeding. In addition, in Response to Interrogatories from KMC, Sprint has made available at its offices for review confidential information relating to other carriers with whom Sprint has had similar disputes to the dispute that is the subject of this Complaint, although KMC chose not to avail itself of the opportunity to review this information.

Sprint responded properly to Interrogatory No. 87 to the extent that such responses did not require Sprint to produce irrelevant and highly confidential information that Sprint is required by law to protect relating to Sprint carrier customers who are competitors of KMC. Therefore, KMC's Motion to Compel as it relates to Interrogatory No. 87 should be denied.

Interrogatory No. 90

In Interrogatory No. 90 KMC asks Sprint, once again, whether it has any evidence that Sprint IXC was identified as a carrier on the originating leg of any of the calls that are the subject of Sprint's Complaint. Sprint responded by referring to its response to KMC's Interrogatory 11, in which Sprint explains that it can only identify the IXC involved in a call when the call was originated by a Sprint end user or when it passed through the Sprint tandem on the originating leg of the call (i.e., on correlated calls). Sprint stated that it had not identified Sprint IXC as a carrier on ANY of the correlated call records it had examined relating to the KMC traffic that is the subject of this dispute.

KMC apparently believes Sprint's answer is insufficient in that it avoids responding to whether Sprint identified Sprint IXC as a carrier on any NON-correlated

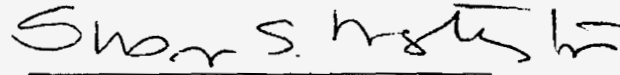
calls (i.e., calls that were not originated by a Sprint end user or through the Sprint tandem). (KMC Motion at paragraph 21) Sprint believes its answer sufficiently explains the limits and extent of Sprint's ability to identify the IXCs involved in the calls that are the subject of this dispute. But in the extent this answer may still be unclear to KMC, Sprint again states that it can ONLY tell the IXC on correlated calls and it has not identified Sprint IXC as the IXC on any of the correlated call records it has examined. Sprint cannot identify the IXC on non-correlated calls and, therefore, cannot respond as to whether Sprint IXC was a carrier on any of those calls.

Sprint fully and completely responded to Interrogatory No. 90 (as well as to previous Interrogatories requesting the same information, including KMC Interrogatory No. 11, KMC Interrogatory No. 68 and Staff Interrogatory No. 9) by providing the information that is within Sprint's knowledge in compliance with the Florida discovery rules. Therefore, KMC's Motion to Compel as it relates to Interrogatory No. 90 should be denied.

Conclusion

Sprint has properly objected or responded to each of KMC's Interrogatories and properly objected to or provided any relevant documents that are 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. Therefore, Sprint asks the Commission to deny KMC's Motion to Compel.

RESPECTFULLY SUBMITTED this 15th day of July 2005.



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ATTORNEY FOR SPRINT-FLORIDA,
INCORPORATED

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)
Section 364.16(3)(a), Florida Statutes.)
_____)

**SPRINT-FLORIDA INCORPORATED'S SUPPLEMENTAL RESPONSES TO
KMC'S FOURTH SET OF INTERROGATORIES AND FIFTH PODS**

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.340 and 1.280(b), Florida Rules of Civil Procedure, by and through undersigned counsel, Sprint-Florida, Incorporated (hereinafter "Sprint") hereby submits the following Supplemental Responses to KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC's (collectively KMC) Fourth Set of Interrogatories and Fifth Request for Production of Documents, which were served on Sprint on June 16, 2005. The general and specific objections to KMC's Fourth Set of Interrogatories and Fifth Request for Production of Documents filed on June 27, 2005, are incorporated herein by reference and in providing the following Responses, Sprint does so notwithstanding and without waiving any of these previously filed objections.

RESPONSE TO INTERROGATORIES

Interrogatory 83: In the rebuttal testimony of James Burt, (page 18), Mr. Burt refers to and attaches as Exhibit 2 to his testimony “sample calls” for which Sprint-FL provides customer billing and SS7 information. With respect to those “sample calls” and the information provided for those call, please answer the following:

- (a) Why were these six calls selected to investigate and provide to the Commission and KMC during this proceeding?**
- (b) To the extent not explained in response to (a), how did Sprint-FL select these six calls to investigate and provide to the Commission and KMC?**
- (c) What steps did Sprint-FL take in order to obtain the call information and data for the six sample calls, including, but not limited to, entities contacted, software or technology used, and all methods used to obtain, pull and sort any information provided?**
- (d) Was any information or documentation concerning the six sample calls obtained during this investigation and analysis process but not provided in the attachments to Mr. Burt’s testimony? If so please identify and describe this information and documentation.**
- (e) Did Sprint-FL investigate or attempt to investigate any individual calls other than the six calls provided with Mr. Burt’s testimony? If the answer is yes, please identify every other call that was investigated in the same manner as the six sample calls and identify all documentation related to such investigation. Explain why the information regarding these phone calls was not included in the exhibits and what information was obtained regarding the phone calls not included in the exhibits.**
- (d) On what facts does Sprint-FL base its conclusion that the traffic involved in the six sample calls is POTS telephony? Please explain in detail the alleged facts on which this conclusion is based and why the calls could not be IP telephony.**

Response: Please see Sprint’s Objections previously filed on June 27, 2005.

Supplemental Response: Supplemental Response: The investigation resulting in the identification of the six calls that were presented on Exhibit JRB-2 was initiated at the request and under the direction of Sprint attorneys for information about what Sprint’s records show to in order to rebut the testimony of KMC witnesses that the traffic that is the subject of Sprint’s Complaint is “enhanced services” traffic and to support the testimony of Mr. Burt that the traffic is POTS traffic. Attorney client communications include primarily verbal telephonic discussions concerning the testimony and strategy for developing rebuttal testimony, as well as some e-mail communications exchanged between Sprint’s witnesses, litigation support staff and attorneys. To

the extent that Interrogatory No. 83 requests information concerning these attorney/client communications and the mental impressions, conclusions, opinions or legal theories of Sprint's attorneys regarding the significance and value of the information as it relates to Sprint's prosecution of its case, Sprint objects to the Interrogatory as requesting attorney/client privileged communications and trial preparation/work product materials. Notwithstanding and without waiving Sprint's objections and its ability or right to assert these objections in similar situations, to the extent the Interrogatory requests information regarding the calls identified in the Exhibit, rather than the litigation strategy behind the creation of the Exhibit, Sprint responds as follows:

(a) The six calls provided were randomly selected from the universe of SS7 correlated call records dated 4/19/04 and previously provided to KMC. The intent of providing these call records was to demonstrate that the calls were POTS toll originated and POTS terminated and, as toll, were returned to Sprint via KMC's local interconnection trunk groups. Sprint expected these toll calls to be returned to Sprint via a toll carrier on a Feature Group D (FGD) trunk group and not through KMC's local interconnection trunk group.

(b) See response to (a)

(c) To acquire the six call samples, Sprint did the following:

1. Divided the population of the 4/19/04 Excel file of correlated call records into two distinct data sets: a) calls with the charge party number equal to 850-201-0579, b) calls with the charge party number equal to 239-689-2995.
2. In order to get matching call records, Sprint must locate calls that both originate and terminate to Sprint. For example, of the approximately 16,000 records in the 04/19/04 data file, approximately only 3% were originated from a Sprint LTD access line, the others were originated from other carriers, e.g., BellSouth, Verizon, SBC, etc., access

lines. Of this 3%, the records must be further identified which also terminate to a Sprint end user access line in Tallahassee or Ft. Myers which was not ported. This required a further scanning of the records to identify the terminating NPA/NXX, which then had to be checked against a separate data base to ensure that the originating and terminating telephone numbers were not ported. The process of identifying the terminating Sprint access line further reduced the number of records from which the correlated records could be produced. Thus, the above process was followed until three records were identified for each of the two charge party numbers.

3. The six SS7 correlated call records were then pasted into a MS Word document for easy reference and for which was provided in Mr. Burt's rebuttal testimony as Exhibit 2.
4. The next step was to acquire the previously produced production bill image for each of the six call records focusing on the calling party number. This activity included accessing Sprint Local's customer bill image database that stores images of end user customer bills. The image of each end user bill associated with the calling party was printed to an Adobe PDF file format.
5. Once in the PDF file format, the SS7 call record in the MS Word file was matched to the toll call in the long distance toll charge section of each calling party's production bill and highlighted in yellow using the Adobe PDF software highlighting tool capability.
6. A similar process as noted in step #4 was completed to acquire the previously produced production bill image for the end user customers that were called by the customers in step #4.

Approximately 45 to 60 minutes was required to identify and match the records for each call. In every case, for all the identified six records, the data showed the calls were POTS originated and

POTS terminated. Because of the time required to match a call, and the fact that every call matched produced the same POTS to POTS result, only the six calls were initially identified. All of the data and technologies used in the six steps above were readily available to the Network Engineering organization.

(d) No, Sprint did not obtain any information regarding the sample calls that was not provided.

(e) In preparing Exhibit JRB-2, Sprint did not investigate or attempt to investigate any other calls. However, subsequent to the filing of the testimony, Sprint used the process described above to identify additional calls, but only focused on obtaining the origination side of the call due to the time involved. The records for these additional calls are provided in response to POD No. 74. Again, all of these records indicate that the calls were from POTS customers using an interexchange carrier to originate the calls, none of the records identified Sprint long distance as the interexchange carrier and the calling parties were charged long distance charges for these calls.

(d) Please see the Rebuttal Testimony of Mr. Burt, page 18, lines 9-18 for an explanation of why Sprint believes these calls involve POTS and not IP telephony. Specifically, the sample bills provided show that the calls were initiated from a Sprint voice customer, were billed to that customer as a long distance call, and were terminated to a Sprint voice customer. In Exhibit JRB-2, the SS7 records (which are extracts from the April 19, 2004, correlated call records provided to KMC in Response to POD No. 15) are tied to the customer invoices to show the calling and called party numbers, to show the IXC involved on the originating end of the call and to show that the call terminated over Sprint's local interconnection trunks.

Respondent: As to the objections, Sprint's undersigned counsel, as to the Response, Joan M. Tonkinson, Natl Engineering Standard Mgr IV

RESPONSE TO PODS

74) Please provide copies of all documents identified by you in your response to or otherwise relied on by you or related to your response to Interrogatory No. 83.

Response: Please see Sprint's Objections previously filed on June 27, 2005.

Supplemental Response: While Sprint believes that any documents investigated and examined by Sprint in the course of preparing its pre-filed testimony and preparing for cross-examination of witnesses are trial preparation materials pursuant to Rule 1.280(b)(3) and, therefore, not discoverable except under extraordinary circumstances not demonstrated here, Sprint provides the attached documents, in order to address KMC's expressed concern that Sprint purposely excluded documents that might be perceived as unfavorable to its case.

In addition, to the attached documents, Sprint is withholding e-mails relating to the development of the exhibit, which are privileged as attorney client and trial preparation materials, as detailed below:

May 9, 2005, e-mail string involving Susan Masterton, Esq. and Joanie Tonkinson, Chris Schaffer, Ritu Aggarwal, Bill Wiley, Jim Burt, Tom Grimaldi, Esq., Janette Luehing, Esq. and Ben Poag, involving discussions concerning the preparation of Sprint's Rebuttal Testimony, including, among other things, discussions concerning Exhibit JRB-2.

May 10, 2005 e-mails involving Susan Masterton, Esq. and Jim Burt, Janette Luehring, Esq., Tom Grimaldi, Esq., Linda Bennett and Ben Poag specifically discussing the preparation of Jim Burt's Rebuttal Testimony, including the information contained in Exhibit JRB-2

May 10, 2005 e-mails between Jim Burt and Joanie Tonkinson forwarding the zip file that became part of Exhibit JRB-2

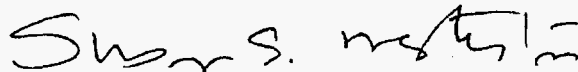
May 10, 2005 e-mail involving Susan Masterton, Esq., Jim Burt and Joanie Tonkinson discussing the preparation of Exhibit JRB-2.

May 15, 2005 e-mail from Jim Burt to Chris Schaffer, forwarding the May 10, 2005 e-mail containing the Exhibit JRB-2 zip file.

May 16, 2005 e-mail string between Susan Masterton, Jim Burt, Ben Poag, Janette Luehring, Linda Bennett, and Joanie Tonkinson, discussing the preparation of responses to KMC's 3rd Set of Interrogatories and 4th POD Request, including a request for information involving Exhibit JRB-2.

The documents provided and the listed privileged communications constitute all of the documents responsive to POD No. 74.

DATED this 15th day of July 2005.



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ATTORNEY FOR SPRINT

Attachment to POD # 74
Redacted

CONFIDENTIAL