

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041144-TP

In the Matter of:

COMPLAINT AGAINST KMC TELECOM III LLC,
KMC TELECOM V, INC., AND KMC DATA LLC
FOR ALLEGED FAILURE TO PAY INTRASTATE
ACCESS CHARGES PURSUANT TO ITS
INTERCONNECTION AGREEMENT AND SPRINT'S
TARIFFS AND FOR ALLEGED VIOLATION OF
SECTION 364.16(3)(a), F.S., BY
SPRINT-FLORIDA, INCORPORATED.



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VOLUME 1
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PROCEEDINGS: HEARING

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER RUDOLPH "RUDY" BRADLEY

DATE: Tuesday, July 12, 2005

TIME: Commenced at 9:30 a.m.
Concluded at 10.15 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732

1 PARTICIPATING:

2 EDWARD YORKGITIS, JR., ESQUIRE, and BARBARA MILLER,
3 ESQUIRE, Kelley Drye Law Firm, 1200 19th Street, N.W., Fifth
4 Floor, Washington, DC 20036, appearing on behalf of KMC Data
5 LLC, KMC Telecom III LLC and KMC Telecom V, Inc.

6 FLOYD R. SELF, ESQUIRE, Messer Law Firm, P. O. Box
7 1876, Tallahassee, Florida 32302-1876 appearing on behalf of
8 KMC Data LLC, KMC Telecom III LLC and KMC Telecom V, Inc.

9 SUSAN MASTERTON, ESQUIRE, Sprint-Florida,
10 Incorporated, P.O. Box 2214, Tallahassee, Florida 32316-2214,
11 appearing on behalf of Sprint-Florida, Incorporated.

12 BETH KEATING, ESQUIRE, and LEE FORDHAM, ESQUIRE, FPSC
13 General Counsel's Office, 2540 Shumard Oak Boulevard,
14 Tallahassee, Florida 32399-0850, appearing on behalf of the
15 Florida Public Service Commission Staff.

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1 I N D E X

2 Opening Statement by Ms. Masterton 14
 3 Opening Statement by Mr. Self 20

4

5 WITNESSES

6 NAME: PAGE NO.

7 WILLIAM L. WILEY

8 Prefiled Direct Testimony Inserted 29

8 Prefiled Rebuttal Testimony Inserted 43

9 JAMES R. BURT

10 Prefiled Direct Testimony Inserted 50

10 Prefiled Rebuttal Testimony Inserted 75

11 CHRISTOPHER M. SCHAFFER

12 Prefiled Direct Testimony Inserted 96

13 KENNETH J. FARNAN

13 Prefiled Direct Testimony Inserted 108

14 (Testimony Adopted by Witness Aggarwal)

15 RITU AGGARWAL

15 Prefiled Rebuttal Testimony Inserted 113

16 MITCHELL S. DANFORTH

17 Prefiled Direct Testimony Inserted 119

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EXHIBITS

NUMBER:		ID.	ADMTD.
1	Comprehensive Exhibit List	10	
1-30	(Detailed description of all exhibits contained in Comprehensive Exhibit List)	10	10
31-53		10	10
54-63		11	11
64	(Late-filed, if necessary)		

P R O C E E D I N G S

1
2 CHAIRMAN BAEZ: We'll call this hearing to order.

3 Counsel, will you read the notice, please.

4 MS. KEATING: Pursuant to notice issued May 24th,
5 2005, this time and place have been set for a hearing in Docket
6 Number 041144. The purpose is as set forth in the notice.

7 CHAIRMAN BAEZ: Thank you. And we'll take
8 appearances starting on my left.

9 MS. MASTERTON: This is Susan Masterton representing
10 Sprint-Florida, Incorporated.

11 MR. SELF: Good morning, Commissioners. This is
12 Floyd Self of the Messer Caparello and Self law firm appearing
13 on behalf of KMC. I would also like to enter an appearance for
14 Chip Yorkgitis and Barbara Miller of the Kelley Drye & Warren
15 law firm in Washington, D.C., also on behalf of KMC.

16 MS. KEATING: Beth Keating and Lee Fordham on behalf
17 of the Commission.

18 CHAIRMAN BAEZ: Thank you. As you may have noticed,
19 Commissioner Deason is joining us through the magic of
20 telecommunications, which I'm sure you can all appreciate.

21 Ms. Keating, we have preliminary matters. And I
22 guess we can take up the stipulation first.

23 MS. KEATING: Yes, sir, I believe that would be
24 appropriate. The parties have reached an agreement that the
25 testimony and prefiled exhibits of the witnesses may be

1 inserted into the record without cross-examination. In view of
2 that agreement, the parties have also agreed that it would
3 still be appropriate to hold opening statements today, and they
4 also would ask for permission to file reply briefs on September
5 2nd.

6 CHAIRMAN BAEZ: Very well. And we will go with that
7 agreement. And we'll hold the opening statements back until we
8 get all the preliminary matters done. Now, in terms of the
9 testimony, my understanding and maybe I'm getting out of order.
10 But, Mr. Self has some changes. Are there some changes to the
11 testimony that we are going to enter into the record on behalf
12 of your witnesses?

13 MR. SELF: That's correct, Commissioner. KMC, as you
14 know, had filed a counterclaim which was dismissed. And after
15 working through this with Sprint, I believe we have an
16 agreement that some of the testimony will stay in because it
17 goes to KMC's affirmative defenses. Some of it clearly comes
18 out because it is no longer relevant, and that is what those
19 edited pages -- and I was going to identify those when we
20 actually got to the point of moving those into the record.

21 CHAIRMAN BAEZ: Well, then let me do this.

22 Ms. Masterton, do you have any changes to the
23 testimony that's going to be stipulated into the record?

24 MS. MASTERTON: Yes. Actually, I had prepared an
25 errata sheet that contains that kind of technical corrections,

1 and I don't think it has been identified as an exhibit, but I
2 have provided it to --

3 MS. KEATING: It has been. It is included on the
4 list.

5 MS. MASTERTON: Thank you. I'm sorry.

6 CHAIRMAN BAEZ: So we have got you taken care of.
7 And without -- we can go ahead and move Sprint witness exhibits
8 in totality into the record as though read, subject to the
9 errata sheet that has been identified as an exhibit.

10 MS. MASTERTON: Can I just clarify something, because
11 I think the exhibits are just the testimony exhibits, it's not
12 the testimony itself, is that correct?

13 CHAIRMAN BAEZ: We're going to go through the
14 exhibits separately. There will be a moment where you can make
15 changes to whatever -- I'm holding a stipulated exhibit list,
16 or a comprehensive exhibit list that we are all going to spend
17 some time paring down, if necessary, of what is going --

18 MS. MASTERTON: I think I just misunderstood what you
19 just said, then.

20 CHAIRMAN BAEZ: I just want to get the testimony
21 moved into the record.

22 Mr. Self, then let's go ahead and work on your
23 testimony, whatever clarifications to the testimony you need to
24 make, modifications to the testimony, so that we can move the
25 testimony into the record.

1 MR. SELF: Okay, that's fine. I have distributed to
2 everyone, and I have additional copies if someone needs it, the
3 corrected pages to the Marva Johnson direct testimony. At the
4 top of the first page it says "Johnson" handwritten. And then
5 the other stack of pages at the top says "Twine," which is for
6 Ron Twine for his direct testimony. And these are the original
7 pages with the corrections simply, unfortunately handwritten in
8 so there wouldn't be any confusion as to what was originally
9 there and what is coming out.

10 CHAIRMAN BAEZ: Okay. And, Ms. Keating, do we need
11 to -- would it suffice just to have these entered as part of
12 the testimony?

13 MS. KEATING: I believe so. I believe those could be
14 inserted into the transcript as the revised versions of the
15 testimony.

16 CHAIRMAN BAEZ: So, then, we will accept into the
17 record as though read the revised testimony as set forth in the
18 documents that Mr. Self has provided to all of us, the revised
19 testimony of the KMC witnesses as though read.

20 Now we can take up exhibits.

21 MR. SELF: Mr. Chairman, can I, just so the record is
22 clear, make one other clarification. We filed the appropriate
23 papers weeks ago, but I just want to make sure the record is
24 clear. Mr. Ronald Twine has been substituted for KMC's witness
25 Tim Pasonski. And at the time that we did the substitution, we

1 filed a new page -- I just want to find it so I can say it
2 correctly -- for the direct testimony, we filed for Mr. Twine
3 Pages 1 and 2 that would be substituted for Page 1 of Mr.
4 Pasonski's direct testimony. And then what I have handed out
5 today for Mr. Twine for his direct also says Page 2, this was
6 the original Page 2 of Mr. Pasonski with the first nine lines
7 stricken. So there will actually be Page 2s, and maybe I
8 should have labeled something A and B, but anyway.

9 CHAIRMAN BAEZ: Okay. Did everybody get that?

10 Did Jane get that?

11 Okay. Good.

12 MR. SELF: And then for Mr. Twine's rebuttal
13 testimony, that actually was a clean substitution, so there is
14 a substitute Page 1 that replaces the Pasonski Page 1.

15 CHAIRMAN BAEZ: Very well. We will let the record
16 reflect Mr. Self's clarifications.

17 I think we are at that point where we can take up the
18 exhibits. You have been handed a comprehensive exhibit list
19 which is also marked as Exhibit 1. Does everyone have it?
20 Everyone has the list?

21 MR. SELF: Yes, sir.

22 MS. MASTERTON: Yes.

23 CHAIRMAN BAEZ: Okay. We are going to be working off
24 of that. And we will mark that comprehensive exhibit list as
25 Exhibit 1. It also contains sequential numbering 1 through 64.

1 And if there are no objections, we can take up Exhibits 1
2 through 30.

3 MS. KEATING: Staff would move Exhibits 1 through 30
4 into the record.

5 CHAIRMAN BAEZ: If there is no objection, show
6 Exhibits 1 through 30 moved into the record.

7 (Exhibits 1 through 30 marked for identification and
8 admitted into the record.)

9 CHAIRMAN BAEZ: Now, Ms. Masterton, we will take up
10 Sprint witness exhibits first. Are there any changes, or is
11 it -- are there any exhibits that need to be left out on your
12 part?

13 MS. MASTERTON: No. This is correct.

14 CHAIRMAN BAEZ: Okay. So I'm showing Exhibits 31
15 through 53, is that correct?

16 MS. MASTERTON: Correct.

17 CHAIRMAN BAEZ: Without objection, show Exhibits 31
18 through 53 moved into the record.

19 (Exhibits 31 through 53 marked for identification and
20 admitted into the record.)

21 CHAIRMAN BAEZ: And, Mr. Self, that leaves you with
22 the balance, 54 through 64. I need you to walk me through.
23 Are there exhibits that need to be left out or --

24 MR. SELF: No, sir. The list of 54 through 63 is
25 correct. That is what we would be moving at this time and

1 reserving 64, subject --

2 CHAIRMAN BAEZ: As a late-filed, if necessary.

3 MR. SELF: Yes, sir.

4 CHAIRMAN BAEZ: Very well. Without objection, show
5 Exhibits 54 through 63 on behalf of KMC moved into the record.
6 Also let the record reflect that there is a place holder,
7 Exhibit Number 64, which will be filed, if necessary.
8 Late-filed if necessary, I'm sorry.

9 (Exhibits 54 through 63 marked for identification and
10 admitted into the record.)

11 CHAIRMAN BAEZ: That's it for exhibits?

12 MS. KEATING: Yes, sir.

13 CHAIRMAN BAEZ: Okay. Great.

14 Now, next up I'm showing a motion for
15 reconsideration.

16 MS. KEATING: Yes, sir, that's correct. KMC has a
17 pending motion for reconsideration of an order granting in part
18 and denying in part KMC's motion to compel responses to its
19 first set of interrogatories and first request for production
20 of documents. KMC has requested oral argument.

21 CHAIRMAN BAEZ: Commissioners, there is a request for
22 oral argument, and it's my turn to poll you on what your
23 pleasure is. Do we have a motion on oral argument?

24 COMMISSIONER DEASON: Mr. Chairman, can you hear me?

25 CHAIRMAN BAEZ: Yes, I can, sir.

1 COMMISSIONER DEASON: I apologize, but the only
2 person I have been able to hear this whole morning has been
3 Floyd Self.

4 CHAIRMAN BAEZ: Well, Mr. Self has that kind of
5 voice.

6 COMMISSIONER DEASON: Yes, he does.

7 CHAIRMAN BAEZ: Can you hear me?

8 COMMISSIONER DEASON: I hear you now, yes.

9 CHAIRMAN BAEZ: All right. I'm sorry, I've probably
10 been mumbling all morning.

11 COMMISSIONER DEASON: If you could please just ask
12 everybody to speak directly into the microphone, maybe that
13 will help. But, yes, Mr. Self is the only one that I've been
14 able to hear so far.

15 CHAIRMAN BAEZ: Okay. Commissioner Deason, we are on
16 the motion for reconsideration at this point. And I guess I'm
17 entertaining, or I'm taking temperature on a request for oral
18 argument on that motion.

19 COMMISSIONER DEASON: Okay.

20 CHAIRMAN BAEZ: And we can either have a motion on
21 oral argument. If it your pleasure to hear it or not have it,
22 please let me know.

23 COMMISSIONER DEASON: Well, Mr. Chairman, you know, I
24 don't need it, but I'm not opposed to anybody that wishes to,
25 any other Commissioner. But I, personally, do not need oral

1 argument.

2 CHAIRMAN BAEZ: Commissioner Bradley?

3 COMMISSIONER BRADLEY: Second.

4 CHAIRMAN BAEZ: If that is a motion and a second,
5 we'll show that request for oral argument denied.

6 Now we are on the motion for reconsideration.

7 COMMISSIONER DEASON: Mr. Chairman, if a motion is in
8 order, I'm prepared to make one.

9 CHAIRMAN BAEZ: It is in order.

10 COMMISSIONER DEASON: Mr. Chairman, I would move that
11 we deny the motion for reconsideration.

12 COMMISSIONER BRADLEY: Second.

13 CHAIRMAN BAEZ: There is a motion and a second, all
14 those in favor say aye.

15 (Unanimous affirmative vote.)

16 CHAIRMAN BAEZ: Thank you, Commissioners.

17 Ms. Keating, where does that leave us?

18 MS. KEATING: I believe that brings you to opening
19 statements.

20 CHAIRMAN BAEZ: All right. Do we have a limit on
21 opening statements? Ten minutes per party?

22 MS. KEATING: Ten minutes per party, yes, sir.

23 CHAIRMAN BAEZ: And is there a particular order that
24 we need?

25 MS. KEATING: This is Sprint's complaint, so I

1 believe that Sprint would be the appropriate --

2 CHAIRMAN BAEZ: Very well. Ms. Masterton, you have
3 ten minutes.

4 MS. MASTERTON: Commissioner Deason, can you hear me?

5 COMMISSIONER DEASON: Yes, I hear you very well.
6 Thank you.

7 MS. MASTERTON: Thank you.

8 Good morning, Commissioners. We are here today
9 because of a complaint that Sprint filed against KMC for
10 knowingly delivering interexchange traffic over its local
11 interconnection trunks with Sprint in order to avoid access
12 charges that would otherwise be due Sprint for the traffic.

13 Sprint is alleging that KMC's wrongful termination of
14 the traffic is a violation of Florida law, KMC's
15 interconnection agreements with Sprint, and Sprint's tariffs.
16 In support of its claims, Sprint has provided multiple days of
17 call detail records that show that the traffic KMC terminated
18 over its local interconnection trunks with Sprint was
19 originated by numerous different calling parties in different
20 local calling areas, in fact, in different LATAs and different
21 states from the Sprint Fort Myers and Tallahassee local calling
22 areas where the calls were terminated.

23 Although KMC will claim that Sprint has provided KMC
24 insufficient information for KMC to defend against Sprint's
25 claims, in fact, the record shows that from the time it was

1 first contacted by Sprint with questions concerning this
2 traffic, KMC knew exactly which KMC customer was responsible
3 for the traffic and the exact manner in which the traffic was
4 being delivered to Sprint for termination.

5 As its defense to Sprint's claims, KMC alleges that
6 the KMC customer that is responsible for this traffic is an
7 enhanced services provider, and that the customer, therefore,
8 is entitled to purchase local services and is exempt from
9 access charges. But KMC cannot discard the nature of these
10 alleged enhanced services, except to say that the customer is a
11 VOIP provider and has self-certified that its traffic is an
12 enhanced service.

13 However, there is no FCC or Florida Commission
14 decision that classifies VOIP as an enhanced service, or that
15 holds that VOIP services that use the public telephone network
16 for origination or termination of traffic are exempt from
17 access charges.

18 In addition, KMC is asking you to believe that it
19 provides local service to Customer X via Customer X's switch
20 that is physically located in Orlando, and that it provides
21 this local service by connecting the Orlando switch to KMC's
22 switches in Tallahassee and Fort Myers versus -- via PRI
23 circuits. These PRI circuits that KMC alleges are local are
24 transported between these Orlando and Fort Myers or Tallahassee
25 local calling areas over interexchange interLATA transport

1 facilities that are leased by KMC from an interexchange long
2 distance carrier.

3 KMC wants you to believe that this interexchange
4 traffic is local because KMC assigned it a billing number that
5 is local to the terminating end users, even though the
6 telephone numbers that KMC assigned are non-working telephone
7 numbers. KMC's switches were conveniently programmed to insert
8 these Tallahassee and Fort Myers telephone numbers into the
9 charge party fields in the call records so that the billing
10 records of the toll calls that KMC was sending to Sprint appear
11 as local calls. And then KMC claims that these non-working
12 telephone numbers that it has assigned to its customer and that
13 are inserted into the charge party field to make the calls
14 appear local were the billing telephone numbers for the PRI
15 services that KMC provided to Customer X, and they assert this
16 even though the telephone numbers do not appear on the monthly
17 bills that KMC sent to Customer X for these facilities.

18 KMC would further have you believe that even though
19 the evidence shows that KMC had knowledge from the beginning
20 that the service Customer X -- we call it Customer X, I think
21 now we are allowed to say the name, PointOne -- requested was a
22 bypass of LEC access, and KMC also knew that 100 percent of the
23 traffic was bound for Sprint customers, but KMC still says that
24 it had no idea that this was toll traffic.

25 However, the call detail records that Sprint examined

1 and has offered in evidence in this proceeding for these calls
2 show that they originated not from Customer X, as KMC
3 testifies, but from many different end users in many different
4 cities in Florida, and actually across the United States. And
5 Sprint has provided copies of some of its customer bills that
6 show where long distance calls were placed, and they were
7 placed by Sprint residential end users through long distance
8 carriers and they were billed to these customers at long
9 distance charges on their monthly telephone bills. And these
10 are the same calls, and we can tie them together from the call
11 detail records that we have, and then our customer bill and the
12 numbers that were called from and to, and these same calls were
13 billed long distance to the residential end users, but came to
14 us, finally, over KMC's local interconnection trunks.

15 Our records also show that these are not
16 call-forwarded calls, as KMC has tried to imply in some of its
17 testimony. Rather, they were just a call from a calling party
18 dialing the called party number to which the call was
19 terminated by Sprint.

20 Recognizing the absurdity of its arguments regarding
21 the nature and jurisdiction of the traffic, KMC has attempted
22 to deflect it's responsibility under the interconnection
23 agreements in various ways by saying that you had to have --
24 Sprint had to do an audit before they could make its claim,
25 that KMC doesn't have sufficient records to verify the charges,

1 that Agilent findings are untested and potentially in error,
2 that KMC's access charge revenues are decreasing and that that
3 shows that Sprint is doing the same thing, and also then that
4 Sprint should finally go after somebody else beside KMC to
5 collect the access charges.

6 But the record is clear on all of these issues. An
7 audit is not required by either the interconnection agreements
8 or the tariffs. Sprint has provided more information on the
9 back-billed access charge calculations than it usually provides
10 to its customers in its regular monthly access charge bills,
11 bills that KMC has received for years.

12 Agilent is used by numerous companies in the
13 telecommunications industry and is used by Sprint and accepted
14 by its IXC customers for establishing billing factors for
15 access bills exceeding hundreds of millions of dollars
16 annually.

17 KMC has produced no evidence to say that the Agilent
18 study is faulty, or that the calculation and supporting details
19 provided by Sprint to substantiate its claim are in error. And
20 the call detail records clearly show that only a very small
21 percent of the calls were call-forwarded calls.

22 And while Sprint's case is based on fact, KMC's
23 defense is based entirely on speculation. Customer X might be
24 an enhanced service provider. Sprint might have done or be
25 doing the same thing as KMC. The Agilent system Sprint and

1 many other companies use might be flawed. The data Sprint used
2 to calculate the billing factors to correct for the improperly
3 terminated traffic might not reflect with 100 percent accuracy
4 the bills that Sprint would have rendered had the traffic been
5 delivered properly and correctly passed through Sprint's
6 billing system.

7 KMC attempts to defend itself through pleas of
8 ignorance and misdirection. It's like the dog bite defense. I
9 don't own a dog, my dog wasn't in town, my dog doesn't have
10 teeth, and the hospital has not provided me with their costs so
11 I can verify the medical bills which need to be audited,
12 anyway, before they can make their claim.

13 Clearly KMC has delayed, motioned, reconsidered,
14 counter-claimed, and thrown in everything, including the
15 kitchen sink, into their defense in an effort to obscure the
16 issues. But their defense just doesn't stand up when all the
17 record evidence is considered. Why would Customer X
18 interconnect with KMC to terminate 100 percent of its traffic
19 to Sprint if it was an enhanced services provider and was
20 exempt from access charges?

21 And just as important, why would the interexchange
22 carriers on the originating end of the call pay access charges
23 if the traffic were truly enhanced services traffic? And why
24 were the interexchange carriers billing the originating end
25 user customers long distance charges? KMC's own internal

1 e-mails admit that the traffic was access bypass, and that is
2 why Customer X was coming to them to provide the service.

3 Don't be misled by KMC attempts to establish a
4 what-if defense. The record is clear that the traffic KMC sent
5 to Sprint over its local interconnection trunks is
6 interexchange traffic, that KMC knew it was interexchange
7 traffic, and that KMC owes Sprint access charges rather than
8 the reciprocal compensation it paid to Sprint. The record is
9 also clear that the methodology Sprint used to determine the
10 amount of avoided access charges is reasonable and in
11 accordance with industry standard practice.

12 Sprint urges the Commission to carefully consider all
13 of the evidence without being distracted by false trails and
14 unproven speculation. And in doing that the Commission will
15 find more than ample support for Sprint's claims.

16 Thank you, Commissioners. I'm open to questions.

17 CHAIRMAN BAEZ: Thank you, Ms. Masterton.

18 Mr. Self.

19 MR. SELF: Thank you, Mr. Chairman.

20 If you remember only one thing from my opening this
21 morning, then please remember that the calling and called party
22 numbers do not decide this case, contrary to Ms. Masterton's
23 assertions this morning. KMC does not dispute that the calling
24 and called party numbers for the traffic at issue are not from
25 the same local calling area, but the jurisdictional

1 classification of these calls is completely irrelevant because
2 the traffic at issue is associated with an enhanced services
3 provider customer of KMC.

4 The FCC decided over 20 years ago that enhanced
5 services providers, or ESPs, are to be treated as end users.
6 And as end users, they are not to be subjected to access
7 charges. Consistent with this longstanding legal obligation,
8 KMC sold PointOne, which is often referred to throughout the
9 testimony and exhibits as Customer X, KMC sold PointOne PRIs
10 like any other business end user.

11 Now, the FCC in making and reaffirming this policy
12 over the last 20 years has not required ESPs to do anything
13 more than to self-certify -- no pun intended there -- their
14 existence as an ESP entitled to purchase business line
15 services. This is what the evidence shows KMC did. Now,
16 Sprint's witnesses would have you believe that something more
17 is required.

18 In fact, cutting through all the noise, Sprint says
19 it is KMC that has two burdens in this case. First, they
20 contend that KMC should have subjected PointOne to a rigorous
21 ESP identity test. But the evidence shows that Sprint cannot
22 tell you the requirements of such a test because the law does
23 not require anything except self-certification. Sprint does
24 not make an ESP prove to it that it is an ESP when an ESP is
25 seeking business line services from Sprint.

1 Now, sure, the Sprint witnesses have said that they
2 make sure that business customers only buy business lines and
3 not residential lines, and they also make sure that the
4 customer -- that what the customer is attempting to purchase
5 from Sprint meets the customer's projected needs without
6 adversely impacting the network or otherwise violating Sprint's
7 tariffs, but the evidence shows that this is exactly what KMC
8 did.

9 The second burden that Sprint says KMC must now meet
10 is that the traffic at issue was, in fact, enhanced services
11 traffic. Now, the four Sprint witnesses who were deposed, as
12 well as Mr. Miller from Agilent, all agree that just looking at
13 what Sprint looked at for bringing this case, the calling party
14 number and the called party number, you cannot determine if the
15 traffic was enhanced. Since I started by telling you that the
16 calling and called party number do not decide this case, I need
17 to repeat the last statement. Of all of the evidence that
18 Sprint has relied upon as a basis for bringing this action,
19 none of it, none of it can tell you whether the traffic is
20 enhanced services or not.

21 Now, to try and rescue its position, Sprint also
22 asserts that KMC changed or altered the charge party number and
23 somehow converted the signaling records to reflect the billing
24 telephone number of the PRIs that KMC sold to PointOne, but the
25 charge party number argument is a red herring. The charge

1 party number was, in fact, the billing telephone number for the
2 PRIs that KMC provided in Tallahassee and Fort Myers to
3 UniPoint's equipment, which is exactly what the switch
4 manufacturer required.

5 This means that the PRIs were switched in Tallahassee
6 and Fort Myers, that KMC properly assigned telephone numbers to
7 the customer, and that the traffic handed off to Sprint in
8 Tallahassee and Fort Myers was respectively destined for
9 Tallahassee and Fort Myers customers. KMC properly and
10 lawfully provisioned the PRIs and did not change or alter
11 anything, even though one end of that PRI was in Orlando.

12 Indeed, given Sprint's reliance on the calling party
13 number, KMC, in fact, passed the calling party number unaltered
14 to Sprint on every single one of the calls at issue. If KMC
15 was trying to deceive Sprint about what it was doing, then it
16 certainly would not have given Sprint a smoking gun on every
17 single call.

18 Sprint deserves a lot of credit. They presented you
19 with a case where none of their evidence can prove or disprove
20 whether the traffic is enhanced, so then they tell you that KMC
21 must now prove it. This is a great Catch-22, because remember,
22 ESPs must only self-certify their status. So the kind of proof
23 Sprint now tells you KMC must present is something that KMC
24 does not and cannot possess.

25 Now, for the purposes of the record, there is

1 competent and substantial evidence that demonstrates that it
2 was reasonable for KMC to conclude that PointOne was an ESP and
3 to provision these PRIs the way that they did. You have
4 undisputed testimony from the salesman who worked with PointOne
5 over many months putting together the specific service
6 arrangements, you have Marva Johnson's testimony and
7 documentation over a two-year period regarding her interactions
8 with PointOne service offerings and contracts, and you have
9 multiple public pronouncements both in FCC filings and in
10 public website content by PointOne that it is an enhanced
11 service provider, and that the services it provides meets the
12 FCC's enhanced services definition.

13 Indeed, when the FCC issued its AT&T IP in-the-middle
14 declaratory ruling regarding VOIP providers, KMC initiated a
15 new round of communications with PointOne to obtain assurances
16 that PointOne was, in fact, not providing AT&T-like IP
17 services.

18 Now, Sprint's witness, Mr. Burt, would have you
19 believe that these actions were somehow designed for KMC to
20 cover its tracks. But in his deposition Mr. Burt admitted that
21 seeking such assurances under the circumstances was certainly a
22 reasonable business practice. The bottom line is that Sprint
23 has failed to demonstrate that the traffic in question, the
24 PointOne PRI traffic, is subject to access charges. KMC was
25 not only justified in provisioning the PRIs the way they did

1 and routing the traffic in question as local, it was required
2 to do so under the FCC orders and rules.

3 PointOne was entitled to treatment consistent with
4 its self-certification as an ESP, and thus was entitled to
5 local services, which is what it received from KMC in both
6 Tallahassee and in Fort Myers. KMC's treatment of UniPoint
7 would wholly consistent with that which Sprint provides to its
8 own ESP customers.

9 On the other hand, all of the Sprint evidence
10 demonstrates its single-minded objective in this case, which
11 was to bill KMC for access charges on all the traffic that it
12 could. All of the information gathered and analyzed by Sprint
13 went to showing that the calling and called party numbers were
14 from different local calling areas. The so-called independent
15 study performed by Agilent did exactly the same thing.

16 With this evidence in hand, Sprint did not follow its
17 interconnection obligations and ask to meet with KMC to review
18 its perceived misunderstanding of the traffic, but rather the
19 first notification KMC received in writing from Sprint was a
20 bill notification for over two and a half million dollars in
21 access charges. Sprint's conduct was not a search for truth,
22 but rather an effort to prove its original assumptions simply
23 by restating them.

24 Now, there's four other points that I would like to
25 briefly address if it is determined that this is not enhanced

1 services traffic. First, if contrary to the federal law you
2 find that KMC was not entitled to the provisioned PRIs to this
3 customer, there still is no basis for assessing access charges
4 against KMC. Rather, any access charges that may be due are
5 due from the customer and/or the interexchange carriers that
6 participated in this traffic and not from KMC. The FCC's rules
7 and the AT&T VOIP orders specifically confirm that IXCs pay
8 access charges. KMC, in this case, was another LEC providing
9 transit services, nothing more.

10 Second, for a number of reasons KMC does not agree
11 with the access charge calculations submitted by Sprint. For
12 example, for the toll traffic, if Sprint cannot identify the
13 nature of the traffic, it assumes that 100 percent of it is
14 intrastate access which, of course, is the highest access
15 charge category that it could possibly assign to that traffic.

16 For some months the data Sprint developed was by
17 their own witness's admission not enough to reasonably develop
18 the necessary factors. In fact, in some months it was only
19 around 40 percent. Also, the sampling they used was not
20 statistically valid or reasonably representative. Together
21 these and other anomalies and discrepancies have not been
22 adequately explained or justified to require the payment of
23 over three million dollars. The only reasonable course is to
24 conduct a later proceeding to conduct an accounting where more
25 realistic and true-to-life numbers can be developed.

1 Third, the only proper party to this action is KMC
2 III. While this is a pretty minor issue in the grand scheme of
3 things, there is absolutely no evidence linking KMC data to any
4 of this traffic. KMC has explained how KMC III used KMC V
5 numbers and resources to provision services to this customer.
6 If Sprint would rather pursue action against KMC V, that's
7 fine, but pick one company. There was only one customer with
8 two sets of PRIs, and there is simply no basis to bring in two
9 different unrelated KMC companies other than for harassment
10 purposes.

11 Finally, a brief word about KMC's affirmative
12 defenses. KMC should be absolved of any liability were it to
13 otherwise apply because Sprint, itself, exchanged significant
14 amounts of interexchange traffic from its own IXC affiliate
15 with KMC in Fort Myers and Tallahassee over local
16 interconnection trunks. And it's clear, at least from what we
17 have seen so far, that 100 percent of that traffic certainly is
18 not enhanced services traffic.

19 While KMC intends to pursue a separate financial
20 recovery from Sprint in another proceeding, KMC should be
21 absolved of any liability were it to otherwise apply for such a
22 determination, or such a determination should be held in
23 abeyance pending the conclusion of those other proceedings.

24 I want to go back to where I started, calling and
25 called party numbers. Yes, they were different, but it doesn't

1 prove anything in this case, and it certainly doesn't prove
2 Sprint's basis for what it seeks to recover from KMC.

3 Thank you.

4 CHAIRMAN BAEZ: Commissioners, do you have questions
5 of counsel for the parties?

6 Very well. Thank you all.

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DIRECT TESTIMONY**

3 **OF**

4 **WILLIAM L. WILEY**

5 **DOCKET NO. 041144-TP**

6

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

8 A. My name is William L. Wiley. My business address is 6550 Sprint
9 Parkway, Overland Park, Kansas, 66251.

10

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

12 A. I am employed by Sprint Local Telecommunications Division as a National
13 Engineering Standards Manager IV – C2P. In this proceeding I am
14 testifying on behalf of Sprint-Florida, Incorporated.

15

16 **Q. Please describe your work experience with Sprint.**

17 A. I began my career with Sprint as a Central Office Equipment (COE)
18 installer, completing 6 years in this field. In 1980, I became a COE
19 Engineer, working on equipment additions to various central offices and
20 switching systems. In 1987 I became a Signaling Systems planning
21 engineer, developing plans for the initial rollout of Signaling System 7 to
22 the Sprint network. In 1990, in addition to SS7 planning I also worked on

1 switch systems planning, developing features and functionality of Sprint's
2 Long Distance switching network.

3 From 1992 to 1997, I became one of Sprint's representatives to T1S1, A
4 standards body associated with signaling and switching systems. Also at
5 this time, I was chosen to be one of Sprint's representatives to the
6 International Telecommunications Union. This body establishes standards
7 for telecommunications for the world.

8
9 In 1997 I became a part of a team that worked on developing a new form
10 of switch and signaling platform. In my position, I developed call
11 processing and signaling processing for the platform. Because of this
12 work, I became the co-inventor of 44 United States patents.

13 In 2002, I became a National engineering standards manager for the
14 implementation of C2P, a new type of switching system, for the local
15 telecommunications division of Sprint.

16

17 **Q. What is the purpose of your testimony in this proceeding?**

18 A. The purpose of my testimony is to provide the facts surrounding the SS7
19 messaging and parameters derived from the call records obtained from the
20 Agilent system that Sprint uses to determine traffic patterns and
21 abnormalities derived from calls destined for the Sprint LTD network.

22

23 **Q. Could you please provide an overview of your testimony?**

1 A. Yes. In my testimony, I will outline the facts concerning KMC's
2 transmission of call setup information to Sprint and KMC's passing of
3 charge party, calling party and jurisdiction information parameters that
4 show the passing of interstate and intrastate interLATA traffic over local
5 interconnection trunks to Sprint. I am providing testimony for the
6 following issues in Order No PSC-05-0125-PCO-TP:

7

8 Issue 4 What is the appropriate method to determine the jurisdictional
9 nature and compensation of traffic?

10

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

15

16 Issue 8 Did KMC deliver interexchange traffic to Sprint over local
17 interconnection trunks in violation of the terms of the Interconnection
18 Agreements with Sprint? If yes, what is the appropriate amount, if any,
19 due to Sprint for such traffic?

20

21 **Q. What systems and information were used to determine the accuracy of**
22 **the call records between Sprint and KMC?**

1 A. The Agilent system is used by Sprint to extract Signaling System 7 Call
2 setup messages and record the information so that traffic patterns and
3 signaling abnormalities can be reviewed and corrected. For this testimony,
4 I will discuss the information captured by this system as it relates to KMC's
5 local interconnection trunk groups interconnected to Sprint and how data
6 collected was used to develop the usage by the appropriate jurisdiction.

7
8 Sprint is interconnected to KMC via a local interconnection trunk group
9 that uses signaling system 7 (SS7) for call by call signaling. This Network
10 to-Network interconnection (NNI) system provides "out of band" call
11 detail signaling information that sets up, provides supervision, and
12 disconnects supervision for telephone calls.. Instead of using tones to pass
13 routing and number identification information over the circuits used for the
14 voice path of the call, SS7 sends this information over a separate link and
15 correlates this call setup information with the voice circuit connected
16 between two switches. With this type of signaling, much more call detail
17 information can be passed, providing for more services and better call
18 control for each switching entity.

19
20 In SS7, there are approximately 5 messages that are sent between the
21 switching entities that control the establishment, duration, and
22 disconnection of calls between the network elements. The five messages
23 are as follows:

1 **Initial Address Message (IAM)** – This message provides call setup
2 instructions from the originating switch to the terminating switch. This
3 message contains information for the routing of the call, information on the
4 originator of the call, charging information, and bearer requirements for the
5 call if applicable. It also provides instructions to the terminating switch
6 concerning which circuit the voice bearer path will be using. This is the
7 primary message that initiates a call between the two switching entities.

8
9 **Address Complete Message (ACM)** – This message is sent from the
10 terminating switch to the originating switch denoting that a voice path has
11 been established and the call can proceed.

12
13 **Answer Message (ANM)** – The ANM provides an indication back to the
14 originating switch that the call has been answered and the conversation can
15 start. It also provides the indication that timing can start for billing
16 purposes.

17
18 **Release message (REL)** - This message, sent in either direction, signifies
19 that one of the parties has disconnected and the call is over. It also
20 provides the end of call indication for billing.

21
22 **Release Complete Message (RLC)** – this message is sent to confirm that
23 the call has been terminated and the circuits associated with the call have

1 been released.

2

3 There may be more messages that are passed between the two switches
4 associated with the call, but for Sprint's analysis, the above mentioned
5 messages are the five used. Most of the information extracted by the
6 Agilent system is derived from the Initial Address Message (IAM).

7

8 **Q. Please explain in layman's terms the Agilent system, what it does, and**
9 **the output it produces.**

10 A. In simple terms, the Agilent system looks at call detail records extracted
11 from the SS7 system described above. Using the originating telephone
12 number and the terminating telephone number, Agilent determines if a call
13 is local or interstate or intrastate interLATA. Information about Agilent is
14 attached to my testimony as Exhibit WLW-1.

15

16 **Q. What information was used to determine that calls were being**
17 **incorrectly routed by KMC over its Local Interconnection Trunks**
18 **with Sprint?**

19 A. The Agilent system captures the SS7 messages and their parameters for
20 each terminating call sent over the SS7 network corresponding with the
21 local interconnection trunks from KMC to Sprint. It then takes these
22 messages and related provisioning information to form a report that shows
23 the various details and parameters of the call.

1 In looking at the reports provided, three basic fields were used to
2 determine routing and the origination information of the calls. These items
3 were Calling Party Number, Charge Number, and Jurisdiction Information
4 Parameter. These parameters determine the originator of the call, the
5 billing number for the call, and the switch entity where the call was
6 originated. The Called party field was also reviewed to ensure the number
7 was local and appropriate to route over the trunk group in question.

8
9 To develop a better understanding of these above mentioned parameters, I
10 will provide a description of each parameter and its usage within SS7 from
11 the Local Switching System Generic Requirements, published by Telcordia
12 Technologies, which determines the basic switching requirements of the
13 Public Switched Telephone Network. This document gives the following
14 definitions for the three parameters under discussion.

15

16 **Calling Party Number (CPN)**

17 The format and coding of the calling party number parameter is similar to
18 that of the called party number parameter.

19 An originating Stored Program Controlled Switch (SPCS) shall include the
20 CPN in the IAM, when available. When included, the CPN can be used to
21 facilitate features at the terminating end such as calling number display,
22 selective call waiting, selective call forwarding, and selective call rejection.

23

1 The calling party number parameter shall include the address digits of the
2 specific station set originating the call.

3 **NOTE:** The calling party number need not be the same number provided
4 by the Automatic Number Identification (ANI) feature of the inband
5 exchange access signaling described in GR-690-CORE, *Exchange Access*
6 *Interconnection, FSD 20-24-0000*. For example, if the station set is behind
7 a Private Branch Exchange (PBX), the number provided by the MF ANI
8 feature might be the main PBX line number rather than the number of the
9 specific station set. The number of the specific station set may be available
10 to the originating SPCS as the calling party number.

11 The originating end office shall determine whether the restriction of calling
12 party address presentation applies for a particular call based on the class of
13 service associated with the calling subscriber's line.

14 If the calling party number is restricted, the address presentation restricted
15 indicator, bits DC in the second octet of the calling party number, shall be
16 coded 01, "presentation restricted." Otherwise, these bits shall be coded
17 00, "presentation allowed."

18 **Charge Number (CN)**

19 The Charge Number (CN) parameter is of variable length.

20 An originating SPCS shall be able to include or to not include the CN, as a
21 pair with the Originating Line Information Parameter (OLIP), in an IAM
22 based on the outgoing trunk group and class of service (i.e., originating
23 screening and routing options).

1 In addition, the CN shall be omitted from the IAM at the originating SPCS
2 if all of the following conditions are met:

- 3 • The OLIP and the CN are to be provided on the outgoing trunk group.
- 4 • The CPN parameter is included in the IAM.
- 5 • The CN address digits agree with the CPN address digits.

6 ... The presence of the OLIP together with the absence of the CN
7 parameter will inform the receiving SPCS that the CN address agrees with
8 the CPN address.

9 The CN parameter shall provide the ANI for the call and the ANI shall be
10 available and identifiable for each call, at each SS7 originating SPCS, and
11 at each SS7 intermediate SPCS serving as an originating SPCS.

12 When included, coding of the Charge Number parameter shall be as
13 follows:

14 ... When included, the CN parameter shall contain, when available, the ten
15 NPA+NXX+XXXX address digits of the ANI in the address information
16 field of the parameter.

17 ... If ten address digits are available in the address information field, the
18 odd/even indicator bit shall be coded "even number of address digits," and
19 the nature of address field shall be coded "ANI of the calling party; national
20 number."

21 ... If the ten address digits are not available, but the Numbering Plan Area
22 (NPA) digits are available, then only the three NPA digits shall be sent in
23 the address information field.

1 ... If only the three NPA digits are available in the address information
2 field, the odd/even indicator bit shall be coded “odd number of address
3 digits,” and again, the nature of address field shall be coded “ANI of the
4 calling party; national number.”

5 ... The numbering plan field shall be coded “ISDN numbering plan (ITU-T
6 Rec. E.164)” when either three or ten digits are sent.

7 ... If no ANI address digits are available, the odd/even bit shall be coded as
8 “even number of address digits,” and the nature of address field shall be
9 coded “ANI not available or not provided.”

10 ... In the case when no ANI digits are available, the octet containing the
11 nature of address code shall be the last octet of the CN parameter.

12

13 **Jurisdiction Information Parameter (JIP)**

14 An originating SPCS shall be able to include or not include the JIP in the
15 IAM as a LEC option based on the outgoing trunk group.

16 Although the inclusion of the JIP in the IAM is a LEC option, with the
17 introduction of LNP, it is expected that the JIP will be included in the IAM
18 for all calls. The JIP is used in LNP to signal the first six digits of the
19 Location Routing number of the switch serving the calling party. The use
20 of the JIP in LNP is further described in GR-2936-CORE, *Local Number*
21 *Portability (LNP) Capability Specification: Service Provider Portability*

22

23 In normal operation, the calling party number and charge number could be

1 used in the same IAM if the CPN and CN were different. But unlike the
2 calling records of the calls from KMC, the CPN and CN should have a
3 relationship between the two. As with stations behind a PBX, the station
4 numbers would be populated in the Calling Party Number while the Charge
5 Number parameter would be populated with the billing number of the PBX
6 itself.

7
8 The charge number is a provisionable field that denotes the billing number
9 of the trunk group it supports. This field is assigned by the carrier at the
10 originating switch. This type of provisioning is usually confined to User –
11 Network trunk groups. That is, trunk groups that interconnect the carriers
12 switch to a user's PBX or customer premise equipment. Signaling for
13 these trunk groups could employ Dual Tone Multifrequency (DTMF),
14 Multifrequency (MF) or Integrated Services Digital Network (ISDN)
15 signaling as in a Primary Rate Interface.

16 The Jurisdiction Information Parameter denotes the Jurisdiction of the
17 originator of the call. That is the location of the switch where the call
18 originated. It is used in Local Number Portability to denote the originating
19 NPA.NXX of the call.

20
21 **Q. What did the SS7 information related to the calls Sprint received from**
22 **KMC reveal in relation to the Telecordia standards described above?**

23 **A. With Sprint's research, the Agilent system provided information which**

1 With Sprint's research, the Agilent system provided information which
2 showed that a large percentage of calls coming from KMC's switches did
3 not meet the standardized criteria for CN, CPN and JIP. The records
4 showed that while the charge number and JIP were attributed to the KMC
5 switch and the calls purportedly originated within KMC's network
6 switches, the calling party number revealed that the calls actually originated
7 in areas outside of KMC's network. A large percentage of these calls were
8 Intrastate InterLATA calls. This information indicated that KMC had
9 violated its agreement with Sprint concerning the proper Local
10 Interconnection trunk arrangements as explained in Mr. Burt's testimony.

11
12 This population of originating calling party numbers outside of the local
13 access area over originating PRI trunks was not relegated to a small
14 number of trunk groups. Through Sprint's research from traffic collected
15 on the Sprint-KMC local interconnection trunks, approximately [REDACTED] trunk
16 groups ([REDACTED] in Tallahassee and [REDACTED] in Fort Myers) that had an originating
17 Charge number and JIP assigned to the KMC Switches were found to carry
18 traffic that originated outside the serving area. These calls could not have
19 come from other switching entities and tandemed through the KMC switch.
20 Since the JIP and CN both are assigned to KMC, the trunk group(s) would
21 have to originate the traffic unless non standard routing or digit
22 manipulation occurred.

23

- 1 **Q How did Sprint determine the appropriate jurisdiction of the traffic**
2 **that KMC was passing to Sprint over the local interconnection**
3 **trunks?**
- 4 **A.** Sprint used SS7 records and Agilent, as described above, to identify the
5 proper jurisdiction of the traffic. The jurisdiction was based on the calling
6 party numbers to the called party numbers in the SS7 call detail records. To
7 determine the amount of access charges KMC would have been billed had
8 the traffic been routed properly, Sprint developed a percentage of
9 interstate, intrastate interLATA and local traffic based on the Agilent
10 study. These percentages were applied to the MOUs from June of 2002
11 through November 2004 to develop the access charge billing amounts
12 KMC should have been compensating Sprint. These calculations are
13 discussed in more detail in Mr. Farnan's direct testimony. These same
14 records were used to determine that the amount of traffic for which KMC
15 received compensation at the local voice rate was more than it should have
16 been. These calculations are discussed in more detail in Mr. Danforth's
17 direct testimony. Attached to my testimony as Exhibit WLW-2, is the
18 Agilent study that was used to calculate the access and local minutes.
19
- 20 **Q.** **Can Sprint produce call detail records to support its findings**
21 **concerning KMC's delivery of interexchange traffic to Sprint over**
22 **local interconnection trunks with a local number?**

1 **A.** Yes. Attached to my testimony as Exhibit WLW-3, are the call detail
2 records supporting the Agilent study. While, theoretically, Sprint could
3 produce all of the call detail records associated with the traffic that is the
4 subject of this dispute, it is unnecessary and would be unduly burdensome
5 and expensive for Sprint to do so. Sprint maintains only six months of the
6 call detail records online (although they include partial months back to
7 January 2004). The remaining data is archived on tapes with a third party
8 vendor. It takes approximately two days to pull and process a calendar day
9 of call detail records from archives. Instead, Sprint has developed a
10 statistically valid random sample of the call detail records, as described in
11 the affidavit from Sprint's economist Dr. Brian Staihr and attached to my
12 testimony as Exhibit WLW-4, to support its allegations. Records reflecting
13 11 days of the 27 days included in the random sample are attached to my
14 testimony as Exhibit WLW-5. Because of the length of time required to
15 pull and process each calendar day of records, Sprint is still compiling the
16 records for the remaining 16 calendar days included in the random sample.
17 Sprint intends to file a Revised Exhibit WLW-5 as soon as the additional
18 data is available.

19

20 **Q.** **Does this conclude your testimony?**

21 **A.** Yes, it does.

22

23

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **REBUTTAL TESTIMONY**

3 **OF**

4 **WILLIAM L. WILEY**

5 **DOCKET NO. 041144-TP**

6

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

8 **A.**My name is William L. Wiley. My business address is 6550 Sprint Parkway,
9 Overland Park, Kansas 66251.

10

11 **Q. Are you the same William L. Wiley who submitted Direct Testimony in this**
12 **docket?**

13 **A.**Yes. I submitted Direct Testimony in this docket on February 28, 2005.

14

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

16 **A.**The purpose of my Rebuttal Testimony is to respond to the Direct Testimony of
17 KMC's witness Mr. Pasonski relating to information provided to support Sprint's
18 claim against KMC and to provide information concerning the normal technical
19 operation of the North American PSTN and KMC's lack of adherence to normal
20 procedures for routing traffic in the PSTN. (Generally, Issues 4, 5 and 8) In
21 addition, via this testimony, I am sponsoring a revised Exhibit WLW-5, as
22 indicated on page 15, lines 2 & 3, of my Direct Testimony and a revised Exhibit
23 WLW-4 (The accompanying affidavit).

1 **Q. Do industry standards “require” billing numbers from PBX’s to be set in the**
2 **Charge Party Parameter of SS7 for calls to the PSTN, As Mr. Pasonski’s**
3 **testimony states on page 6 lines 21-23 and page 7 line 1?**

4 A. No, it is not a requirement. While the Charge Party parameter can have the billing
5 number of the PBX or CPE of a customer, it is not a requirement to have this
6 information in this field. In fact, since the above mentioned parameter could
7 coincide with the Calling Number field, one or the other or both parameters could
8 have the Calling Party Number as the entity to bill. There is no “requirement” for
9 the provisioned Directory Number to be sent in the Charge Party Number field.
10 In fact, Lucent’s Technical Reference Document provides a functionality to provide
11 only the Calling Party’s Number in the Charge and Calling Party parameters for a
12 PRI trunk group. Document number 235-190-104, section 22.1 provides for
13 “Screening Modifications to CPN Billing on PRI”. In the case of a PBX that
14 provides service for an entire office building or other entities that require individual
15 billing (such as a law office), an administrator has the capability to use the Calling
16 Party Number as the billing number.

17

18 **Q. In the testimony of Mr. Pasonski, he states that the assignment of the**
19 **Customer X billing number was provisioned as a Fort Myers or Tallahassee**
20 **number, but the customer’s location was in Orlando. Is this assignment**
21 **practice correct?**

22 A. No. In the testimony of Mr. Pasonski on page 9, lines 11-18, he states that
23 Customer X was a customer that was located in Orlando, FL (in the Orlando

1 LATA) and had requested interconnection to KMC's switches in Tallahassee, FL
 2 (in the Tallahassee LATA) and Fort Myers, FL (in the Ft. Myers LATA). KMC
 3 provided interconnection to their switches via underlying DS3 transmission
 4 facilities (See Exhibit WLW-6). He also states that the customer requested, and
 5 according to KMC's testimony, KMC assigned billing numbers homed to the rate
 6 centers for these interLATA cities for these Orlando-originated PRI's.

7 This configuration of providing a customer premises in Orlando with local number
 8 connections in Tallahassee and Fort Myers violates the North American Numbering
 9 Plan Assignment Guidelines. In the "Central Office Code (NXX) Assignment
 10 Guidelines" published by the Industry Numbering Committee (INC 95-0407-008),
 11 it states the following:

12 **1.0 Purpose and Scope of This Document**

13 :

14 :

15 These guidelines apply only to the assignment of CO codes (NXX)
 16 within geographic numbering plan areas (NPAs). This does not preclude
 17 a future effort to address non-geographic NPAs in the same guidelines.¹
 18 CO codes (NXXs) are assigned for use at a Switching Entity or Point of
 19 Interconnection they own or control. Entities assigned CO Codes are
 20 termed "code holders" in areas where thousands-block number pooling
 21 has not been implemented or for those entities that are not participating
 22 in thousands-block number pooling. Where thousands-block number
 23 pooling has been implemented, an entity assigned a CO Code is
 24 designated as the "LERG² Assignee." While the ultimate delivery of any

1 call to a CO code (NXX) need not be geographically identified, by
 2 necessity initial routing is geographically defined. Therefore, for
 3 assignment and routing purposes, the CO code (NXX) is normally
 4 associated with a specific geographic location within an NPA, from which
 5 it is assigned. For some companies this is also used for billing purposes.

6 _____
 7 ¹ Separate procedures apply to the assignment of NXX codes within
 8 currently assigned Service Access Codes (SACs), and others will be
 9 developed, as appropriate, as new SACs are assigned by NANPA. For
 10 example, NXX assignment guidelines for the 900 SACs are available.
 11 Separate guidelines also will be prepared to address the assignment of
 12 numbering resources reserved for non-geographic applications.

13 ² LERG in the phrase "LERG Assignee" used in this document refers to
 14 the Telcordia™ LERG™ Routing Guide, Telcordia and LERG Routing
 15 Guides are trademarks of Telcordia Technologies, Inc.

16 **2.0 Assumptions and Constraints**

17 :

18 :

19 **2.14 It is assumed from a wireline perspective that CO**
 20 **codes/blocks allocated to a wireline service provider are to be**
 21 **utilized to provide service to a customer's premise physically**
 22 **located in the same rate center that the CO codes/blocks are**
 23 **assigned.** Exceptions exist, for example tariffed services such as foreign
 24 exchange service.

25

Docket No. 041144-TP
Rebuttal Testimony of William L. Wiley
Dated: May 10, 2005

1 As noted in the paragraphs above, assignment of numbers for a customer should be
2 within the geographic location of the CO code. This means that if a service is
3 provided for a customer in Orlando, the NPA NXX of that customer should be in
4 Orlando's LATA and NPA. While the switching doesn't have to be in the same
5 geographic area, the numbering for the customer should follow the NANP
6 guidelines.

7 Even though the guidelines allow for exceptions, such as tariffed FX service,
8 Florida's own general rules on Foreign Exchange service require that: "This tariff
9 applies for foreign exchange service where all facilities and service points are
10 located in the same LATA." See Sprint's General Exchange Tariff A9.A.1.2

11
12 Since KMC willfully provided its Orlando customer with numbers for Ft. Myers
13 and Tallahassee, KMC must have knowingly violated the rules for numbering to
14 make the Orlando presence of the traffic in order to escape access charges for the
15 traffic from this customer.

16
17 With the customer located in a different serving area, NPA and LATA (See Exhibit
18 WLW-7), any call from the customer's premises should have been shown in the
19 charge number as originating from the Orlando NPA. Consequently, all traffic
20 from this customer should have been routed over the toll completing trunk groups
21 between KMC and Sprint rather than the local interconnection trunks which are
22 subject to reciprocal compensation as opposed to access charges applicable on the
23 toll completing trunks.

1 Although the Lucent switch allows the Billing Number to replace the originating
2 Calling Party Number in the Charge Party Number field, the fact is the billing
3 number KMC provided was located in a different LATA in violation of the
4 guidelines for routing numbering within the PSTN. This violation of numbering
5 guidelines is strong evidence that KMC willingly manipulated the charge numbers
6 in a manner that falsely made Customer X's calls appear local in Ft. Myers and
7 Tallahassee.

8
9 **Q. According to Mr. Pasonski's Direct Testimony on page 9, lines 1-8, he states**
10 **that Sprint has the capability to review the Calling Party Number (CPN) and**
11 **place jurisdiction as appropriate. Is this the case for all calls going through**
12 **the Sprint Network?**

13 A. No, not without doing a non-standard study using the Agilent system. While it is
14 correct that the Agilent system is able to extract all the parameters from the
15 incoming and outgoing SS7 messages, Sprint doesn't use this capability in its
16 billing system on a day to day basis, rather, Sprint's use of the Agilent system is
17 for special study purposes to investigate suspected arbitrage, fraud, PIU/PLU
18 validation, and in limited cases for support of billing in the absence of switch
19 records., Sprint utilizes switch generated call detail records (CDRs) which as
20 standard industry billing hierarchy use the Charge Party Number and the Called
21 Party Number to determine jurisdiction and applicable rates. However, when the
22 Charge Party field is provided, Sprint must do a special study using the Agilent
23 system to determine the jurisdiction of a call using the Calling Party Number

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Rebuttal Testimony of William L. Wiley
Dated: May 10, 2005

1 instead of the Charge Party Number. Using Agilent, Sprint was able to determine
2 the exact jurisdiction of the calls for the KMC traffic that is the subject of this
3 complaint, even though the Charge Party Number was inserted to make the calls
4 appear local.

5

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

7 A. Yes.

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DIRECT TESTIMONY OF**

3 **JAMES R. BURT**

4 **DOCKET NO. 041144-TP**

5

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

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

9

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

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

13

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

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

18

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

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

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

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

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

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

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

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

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

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

9
10 **Issue 1: What is the Florida Public Service Commission's jurisdiction to address all or part**
11 **of this complaint?**

12
13 **Q. Which Florida Statutes give the Florida Public Service Commission jurisdiction to**
14 **address all or part of this complaint?**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 2002 MCI Agreement – June 14, 2004 to present

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

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

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

22

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

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

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

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

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

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

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

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

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

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

1 **compensation of traffic?**

2

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

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

13

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

22

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

1 **call in a particular manner?**

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

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

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

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

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

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

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

9

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

11

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

19

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

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

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

12
13 **Issue 5: Did KMC knowingly deliver interexchange traffic to Sprint over local**
14 **interconnection trunks in violation of Section 364.16(3)(a), Florida Statutes? If yes, what is**
15 **the appropriate compensation and amount, if any, due to Sprint for such traffic?**

16
17 **Q. Does your testimony address all aspects of Issue 5?**

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

1 KMC knowingly delivered interexchange traffic over local interconnection trunks in
2 violation of the statute. Sprint's witness Kenneth A. Farnan will address the amount of
3 compensation that is due Sprint for this traffic.
4

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

7 **A.** It is Sprint's position that the inter-carrier compensation for all traffic that terminates to
8 Sprint's network be based on the jurisdictional nature of the traffic using the end to end
9 analysis. Local traffic should be subject to reciprocal compensation rates, intrastate toll
10 traffic should be subject to intrastate access rates and interstate toll traffic should be subject
11 to interstate access rates.
12

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

16 **A.** Yes. As I stated above, local traffic is specifically and clearly defined in all three
17 Interconnection Agreements that were in effect. Compensation for toll traffic (sometimes
18 referred to as interexchange traffic) is also specifically delineated. Attachment 1, Section
19 4.2 of the 1997 and 2002 MCI Agreement and Section 37.2 and FDN Agreement includes
20 the following language.
21

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5

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

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

17

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 A. As explained above, the basis for whether KMC is required to pay access charges for the
2 toll traffic that it delivered to Sprint over local interconnection trunks is the language in
3 Interconnection Agreements between Sprint and KMC, the language in Sprint's Access
4 Service Tariff and Florida Statutes. Each of these three vehicles makes it abundantly clear
5 that KMC is required to pay Sprint's tariffed access charges on all traffic that is not local.
6

7 **Issue 8: Did KMC deliver interexchange traffic to Sprint over local interconnection trunks**
8 **in violation of the terms of its Interconnection Agreements with Sprint? If yes, what**
9 **is the appropriate amount, if any, due to Sprint for such traffic?**
10

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

13 A. Yes. As stated previously, there are three contracts that need to be considered, the 1997
14 MCI Agreement, the FDN Agreement and the 2002 MCI Agreement. The language from
15 each of the agreements follows:
16

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

19 1.1 The Parties shall initially reciprocally terminate Local Traffic and
20 IntraLATA/InterLATA toll calls originating on each other's networks as follows:
21

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

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

10
11 The FDN Agreement contains the following language.

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

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

1 57.1.1.2. Separate two-way trunks will be made available for the
2 exchange of equal-access InterLATA or IntraLATA
3 interexchange traffic that transits Sprint's network.
4

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

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

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

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

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

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

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

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

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

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

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

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

11 **A.** Yes.
12
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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?**

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 purposes 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 \$[REDACTED] 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 [REDACTED] 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 are 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.**
14
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21

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DIRECT TESTIMONY**

3 **OF**

4 **CHRISTOPHER M. SCHAFFER**

5 **DOCKET NO. 041144-TP**

6

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

8 A. My name is Christopher M. Schaffer. My business address is 6550 Sprint Parkway,
9 Overland Park, Kansas 66251.

10

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

12 A. I am employed as a National Engineering Standards Manager in National Network
13 Engineering for Sprint Corporation. In this proceeding I am testifying on behalf of
14 Sprint-Florida, Incorporated.

15

16 **Q. Please provide your education and work background.**

17 A. I received a Bachelor of business Administration degree from the Emporia State
18 University in 1996 and my Masters in Business Administration from Baker University in
19 2000. I begin my career with Sprint in 1998 as a Regional Systems Administrator II in
20 the Regulatory department, conducting traffic analyses for various departments within
21 Sprint. In 2000 I became a National Engineering Standards Manager, in the Sprint Local
22 Telephone Division (LTD) national network organization. Since that time my
23 responsibilities have included ensuring that Sprint Local Telephone has complied with
24 the number conservation efforts set forth by the FCC, state regulators and the industry,
25 including number pooling and number porting initiatives. In mid 2003, I began working

1 on Sprint's LTD revenue assurance initiatives. This includes analyzing SS7 traffic usage
2 summaries and call detail records between Sprint LTD and other carriers, including
3 Interexchange Carriers (IXC)s, Competitive Local Exchange Carriers (CLEC)s and
4 wireless carriers.

5

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

7 **A.** The purpose of my testimony is to address Issue 2, by providing support for why Sprint
8 properly included KMC V, Inc. and KMC Data LLC as parties to this complaint.

9

10 **Issue 2 Are KMC Data LLC and KMC Telecom V, Inc. properly included as parties to**
11 **this complaint?**

12

13 **Q. Why did Sprint include KMC Data LLC and KMC V, Inc. as parties to this**
14 **complaint?**

15 **A.** KMC Data LLC and KMC V, Inc. are both certificated CLECs in the state of Florida. In
16 addition, KMC V is a party to interconnection agreements that Sprint and KMC have
17 operated under during the time frames that are applicable to this Complaint. Also, KMC
18 V and KMC Data are parties to the adoption of the MCI agreement filed by KMC on
19 June 15, 2004, and are parties to the arbitration for a new interconnection agreement that
20 is the subject of Docket No. 031047-TP. In its dealings with Sprint under the
21 interconnection agreements, that is when ordering services and for billing purposes,
22 KMC has not distinguished between its various entities operating in Florida. Rather, all
23 ordering and billing have been done in the name of KMC Telecom. As demonstrated by

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Filed: February 28, 2005
Direct Testimony of Christopher M. Schaffer

1 various certificate filings with the Florida Commission, each of the three Florida
2 operating subsidiaries are either directly or indirectly wholly owned by KMC Telecom
3 Holdings, Inc. See attached Exhibit CSM-1. Based on these facts, Sprint believes that
4 KMC Data LLC and KMC Telecom V, Inc. are proper parties to the complaint, in
5 addition to KMC Telecom, III.

6

7 **Q. Has Sprint done any additional research to determine the involvement of the various**
8 **KMC entities in the actions that are the subject of Sprint's complaint?**

9 **A.** Yes. I undertook several steps in order to help identify the appropriate parties to be
10 included in the Complaint. After looking at SS7 summarized data there was a large
11 amount of terminating interstate and intrastate traffic on KMC/Sprint interconnection
12 trunk groups dedicated for local traffic. I completed an inventory, identifying all of
13 KMC's trunk group interconnections with Sprint. I then identified the trunk groups that
14 are designated as "local terminating", and using correlated call records I determined that
15 virtually all of the interstate/intrastate traffic being incorrectly sent down these "local
16 terminating" trunk groups showed a different charge party number than the calling party
17 number. As an example, call detail records from 9/10/2003 showed that 92% of all the
18 interstate and intrastate MOUs had a charge party number that was different than the
19 calling party number. On this day the records showed that 97% of these MOUs had the
20 same two numbers, 239-689-2995 and 850-201-0579 in the charge party number field of
21 the SS7 records.

22

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1 **Q. Was Sprint able to determine which entity owned the two numbers 239-689-2995**
2 **and 850-201-0579?**

3 **A.** Yes. I used the BIRRDS (Business Integrated Routing and Rating Database System)
4 online Database to confirm which company was assigned the 239-689-2995 and 850-201-
5 0579 telephone numbers. BIRRDS is a national database that provides routing and rating
6 information to the telecommunications industry. One of its outputs is the Telcordia Local
7 Exchange Routing Guide (LERG). The LERG is the accepted industry standard for
8 identifying routing information, carriers providing service in a specific area, and a
9 resource for any company needing information about the network and numbering
10 assignments. Using the BIRRDS NXX Record (NXD) Screen, I was able to determine
11 that 239-689-2995 and 850-201-0579 are both assigned to KMC Telecom V, INC. – FL
12 (OCN 8980). (See attached Exhibit CMS-2)

13

14 **Q. After identifying the two numbers as having been assigned to KMC V, did Sprint do**
15 **any research to determine if KMC had ported the numbers to another carrier?**

16 **A.** Yes. The BIRRDS NXX Record NXD Screen contains information regarding the
17 NPA/NXX-X (Telephone Number, first 7 digits) code assignment by name and Operating
18 Company Number (OCN). Using the Switching Entity Record (SRD), I was able to
19 determine Common Language Location Identifier (CLLI) and Switch Type and again I
20 can validate the NPA/NXX code holder. Using the Assigned Code Record (ACD) screen
21 I was able to determine that both the 239/689 and 850/201 NPA/NXXs are not pooled
22 and KMC is assigned all 10 blocks. In viewing the NXD - Pending Changes Screen
23 (XPC), I was able to identify the base view on the code and ensure that there has been no

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1 change to either NPA/NXX since the base view date which for 239/689 was 03/11/02 and
2 for 850-201 was 1/01/00. After ensuring that both NPA/NXXs were assigned to KMC
3 Telecom V, I then validated that the individual telephone numbers (239-689-2995 and
4 850-201-0579) are not ported with the National Portability Administrative Center
5 (NPAC). The NPAC is the database and associated administrative support staff that
6 contains all Local Number Portability (LNP) data for all LNP regions.

7
8 **Q. You stated that other charge party numbers were used on 3% of the inter/intrastate**
9 **usage that Sprint identified as interexchange calls on the day you checked. What**
10 **does Sprint's research show about the ownership of these numbers?**

11 **A.** 92% of these MOU's are KMC charge party numbers. This was determined by
12 NPA/NXX association or because at the time of the study the individual numbers were
13 ported to KMC.

14
15 **Q. How does ownership of the charge party numbers establish that KMC V is a proper**
16 **party to Sprint's Complaint?**

17 **A.** As I noted earlier, KMC has never ordered its facilities from Sprint in any name other
18 than KMC Telecom. But I was able to show that KMC Telecom V, Inc. was the legal
19 entity that owned at least two different telephone numbers that were inserted into the
20 Charge Party Number field of the SS7 record for calls that were interexchange in nature,
21 but that were inappropriately routed to Sprint over local interconnection facilities. Since
22 the use of this routing scheme, **in violation of the terms of the interconnection**

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1 **agreement**, is at the core of Sprint's complaint, it naturally follows that KMC V is
2 properly a party to this Complaint

3

4 **Q. Does this conclude your testimony?**

5 **A. Yes.**

6

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **REBUTTAL TESTIMONY**

3 **OF**

4 **CHRISTOPHER M. SCHAFFER**

5 **DOCKET NO. 041144-TP**

6

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

8 A. My name is Christopher M. Schaffer. My business address is 6550 Sprint
9 Parkway, Overland Park, Kansas 66251.

10

11 **Q. Are you the same Christopher M. Schaffer who submitted Direct Testimony**
12 **in this docket?**

13 A. Yes. I submitted Direct Testimony in this docket on February 28, 2005.

14

15 **Q. What is the purpose of your rebuttal testimony?**

16 A. The purpose of my testimony is to respond to the testimonies of KMC's witnesses
17 Marva Brown Johnson and Timothy E. Pasonski regarding whether KMC V, Inc.
18 is a proper party to this complaint (Issue 5) and regarding the charge party
19 numbers associated with the traffic that is the subject of Sprint's Complaint. I
20 also address certain SS7 information provided by KMC relating to traffic
21 terminated to KMC by Sprint.

22

1 **Q. On pages 6 and 7 of her Direct Testimony, KMC's witness Ms. Johnson**
2 **makes representations to support KMC's position that KMC V and KMC**
3 **Data are not proper parties to Sprint's Complaint. Do you agree with Ms.**
4 **Johnson's assertions?**

5 A. No. First, as stated in my Direct Testimony on page 2 both KMC V and KMC
6 Data were or are parties to some or all of the interconnection agreements between
7 Sprint and KMC that are relevant to Sprint's Complaint. In addition, KMC's
8 records show that KMC V has been integrally involved in the activities that form
9 the basis of Sprint's Complaint.

10
11 **Q. What do Sprint's records show regarding KMC V's involvement in the**
12 **activities that form the basis of Sprint's Complaint?**

13 A. In Ms. Johnson's Direct Testimony on page 6, lines 14 – 17, she states that “only
14 KMC III sent the traffic in question”. Again, on page 7 lines 6 – 11, Ms. Johnson
15 states “that KMC V and KMC Data did not handle any of the traffic in question”.
16 However, Sprint's records show that KMC V was instrumental in the ordering
17 and provisioning of the local interconnection facilities over which the traffic that
18 is the subject of this Complaint was terminated. Also, as discussed in my Direct
19 Testimony KMC V is the owner of the two charge party numbers KMC states
20 were assigned to the PRIs KMC provided to the customer KMC asserts is
21 responsible for the traffic that is the subject of this Complaint (referred to by
22 KMC as Customer X).

23

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Rebuttal Testimony of Christopher M. Schaffer
Dated: May 10, 2005

1 In my original testimony, I explained that the two numbers consistently and
2 repeatedly used to alter the jurisdiction of the traffic are assigned to KMC V.
3 While KMC originally responded, apparently erroneously, in its Response to
4 Sprint's Interrogatory No.12 that the numbers were assigned to KMC III, KMC
5 appears to have corrected this assertion in its Response to Staff's Interrogatory
6 No. 12, where KMC affirms that both numbers belong to KMC V.

7
8 In Response to Sprint's Interrogatory No. 29(b), KMC has identified KMC V's
9 Operating Company Number (OCN) as 8982. Sprint has identified that this is the
10 OCN KMC provided on its Access Service Requests (ASRs) when it ordered the
11 circuits that carried the traffic in question, and Sprint has confirmed that this OCN
12 is, in fact, assigned to KMC V. KMC's OCN 8982 (KMC V) is the OCN
13 assigned to the two telephone numbers referenced above. OCN 8982 is registered
14 to KMC V, per the NECA (National Exchange Carrier Association) national
15 database. All trunk groups established between Sprint and KMC in Florida were
16 ordered by KMC with OCN 8982. See Exhibit CMS-3 which contains two screen
17 prints showing the trunk groups ordered by KMC using the KMC V OCN. The
18 trunk groups depicted in these screen prints are two of the trunk groups over
19 which the masked interstate/intrastate traffic was terminated to Sprint on KMC's
20 Local Interconnection facilities. These screen prints for both TSC's [REDACTED] in
21 Tallahassee and [REDACTED] in Ft. Myers clearly were submitted by KMC with
22 OCN 8982 on the order. This field is populated by the ordering carrier, and if this
23 field is not populated Sprint will reject the order and send it back to the ordering

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Rebuttal Testimony of Christopher M. Schaffer
Dated: May 10, 2005

1 carrier to populate that field. By KMC's own admission (in Ms. Johnson's
2 response to Sprint's interrogatory #27) the OCN 8982 was assigned from KMC
3 Telecom II to KMC Telecom V. KMC has never submitted ASR's to Sprint to
4 change the OCN 8982 to a KMC III OCN.

5
6 KMC also has stated, in its Response to Sprint's Interrogatory No. 29(a), that both
7 KMC III and KMC V use the ACNA KMM. Sprint bills KMC using the KMM
8 ACNA. Since the number is used by both KMC III and KMC V, it is clear that
9 both entities are accountable for Sprint's billings, contrary to Ms. Johnson's
10 statements on page 6, lines 16 and 17 and in the affidavit she filed in connection
11 with KMC's Motion to Dismiss KMC V as a party to this proceeding (which was
12 denied). Clearly, the evidence, as well as KMC's own admissions, support the
13 inclusion of KMC V, in addition to KMC III, as a proper party to Sprint's
14 Complaint.

15
16 **Q. In her Direct Testimony on page 5 line 23 and page 6 lines 1-2, Ms. Johnson**
17 **states that "only traffic from this former customer [Customer X] is**
18 **implicated by the Complaint." Does Sprint agree?**

19 **A.** No. Sprint is not claiming the only charge numbers implicated in this complaint
20 are the two numbers that KMC has identified as belonging to their former
21 customer. Sprint has identified approximately sixty other telephone numbers that
22 were used repeatedly as the charge number used to change the jurisdiction of the

1 call. Sprint does not have knowledge as to which of KMC's customers "own"
2 these numbers.

3 **Q. In Ms. Johnson's Direct Testimony, on page 24 lines 5 – 7, she claims that**
4 **Sprint Local is routing "toll traffic" in Tallahassee and Ft. Myers over the**
5 **local interconnection trunk groups. What have Sprint's investigations of Ms.**
6 **Johnson's allegations revealed?**

7 A. After reviewing the four hours of SS7 data KMC provided to Sprint in Response
8 to Sprint's POD #19 (represented by KMC to be its SS7 study in their Tallahassee
9 Central Office dated March 26, 2004), Sprint has completed a thorough analysis
10 of the call records in this file. Sprint's analysis shows that in no case did Sprint-
11 Florida originate access traffic that was terminated by Sprint-Florida over its local
12 interconnection trunks with KMC. For the records that Sprint-Florida could
13 correlate, none of this traffic was delivered to Sprint-Florida by Sprint IXC, nor
14 was it delivered to Sprint-Florida over PRI trunks from an enhanced services
15 provider or other Sprint-Florida end user customer. In fact the majority of the
16 calls reflected in the call records were interexchange calls that properly traversed
17 the IXC two-way trunk groups between Sprint and KMC. A smaller subset of the
18 calls were terminated over the local interconnection trunk groups between the
19 parties and for a majority of those calls Sprint was acting as the transiting, not the
20 originating, carrier. Furthermore, the traffic Sprint-Florida sent to KMC was not
21 modified to alter the jurisdiction. See Exhibit CMS-4.

22
23 **Q. Does this conclude your rebuttal testimony?**

1 A. Yes.

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DIRECT TESTIMONY**

3 **OF**

4 **KENNETH J. FARNAN**

5 **DOCKET NO. 041144-TP**

6

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

8 **A. My name is Kenneth J. Farnan. My business address is 6580 Sprint**
9 **Parkway, Overland Park, Kansas, 66251-6110.**

10

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

12 **A. I am employed as a Billing Manager for Sprint Corporation. In this**
13 **proceeding I am testifying on behalf of Sprint-Florida, Incorporated.**

14

15 **Q. Please describe your educational background and work experience.**

16 **A. I received a Bachelor of Science in Business Administration degree from**
17 **Missouri Western State College in Saint Joseph, Missouri in 1979.**

18

19 I began my career with United Telecom in 1979 as a Junior Auditor in
20 United Telecom's Internal Audit Department where I was responsible for
21 completing financial and operational audits of United Telecom's Telephone
22 operations. From 1981 through 1985 I was a Tax Accountant in United
23 Telecom's Federal Tax Department. During this timeframe I supported the

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Filed: February 28, 2005
Direct Testimony of Kenneth J. Farnan

1 preparation of United's Federal Tax returns and the implementation of an
2 automated Federal Tax Return preparation system.

3
4 From 1985 through 1995, I worked in Sprint's Local Telecom Billing
5 Systems Development organization. During this timeframe I held a variety
6 of positions; Senior Analyst, Project Lead, Senior Project Lead and
7 Manager, where my primary responsibilities were to implement
8 modifications and enhancements to Sprint's Local Telecom billing systems.
9 During this time, my experience was primarily with Sprint's Local Division
10 retail billing system known as Customer Records and Billing (CRB). From
11 1995 to 1998, as a Manager in the Local Systems Development
12 organization, I also supported enhancements to Sprint's Local Message
13 Processing System which collects message usage data from Sprint's Local
14 switches, formats the switch records into Call Detail Records (CDRs) and
15 routes these message records to Sprint's Local retail and access billing
16 systems; Customer Records and Billing (CRB) and Customer Access
17 Support System (CASS).

18
19 In 1998 I became Manager of Sprint's Local Message Processing (LMP)
20 Department where my primary responsibility was to manage the
21 organization that handled the daily operations for Sprint's entire Local
22 message processing activities in 18 states. During this time, Sprint
23 processed approximately 1.5 billion messages monthly and my

1 responsibility was to manage the organization that maintained the LMP
2 system reference tables, balanced the daily traffic switch usage records to
3 the Local Division's billing systems.

4
5 In 2002 I started my current position as Senior Manager of Sprint's Carrier
6 Billing organization. In this position I manage the daily operations of the
7 Local Division's Carrier Access Support System (CASS) billing system.
8 CASS is used to invoice interexchange carriers (IXCs) for access charges
9 and Competitive Local Exchange Carriers (CLEC) and Commercial Mobile
10 Radio Service (CMRS) providers for reciprocal compensation. My
11 organization is responsible for monitoring the CASS system, performing
12 invoice cycle verification, updating the system's reference and rate tables,
13 and monitoring the daily flow of traffic from LMP through to the
14 Customers' bill.

15

16 **Q. What is the purpose of your testimony in this proceeding?**

17 **A.** The purpose of my testimony is to provide the appropriate amount of the
18 interexchange access charges, net of reciprocal compensation payments,
19 owed to Sprint by KMC for termination of interexchange toll traffic over
20 local interconnection facilities and to explain how the appropriate amount
21 was calculated.

22

23 **Q. How was the appropriate amount of access charges due to Sprint**

1 **calculated?**

2 **A.** Sprint's witness William L. Wiley explains in his direct testimony how the
3 proper jurisdiction of the KMC traffic was determined using SS7 records
4 and Agilent. Sprint used these SS7 records to calculate PLU factors which
5 were then applied to the billed minutes from the Carrier Access Support
6 System (CASS) to determine what should be interstate, intrastate and local
7 minutes. A true-up was then done on the billed usage to determine the
8 difference of what the customer was initially billed for as local and
9 intrastate minutes and the corrected amount to include the additional
10 access charges. See Exhibit KJF-1, which provides a summary of PLU
11 backbilling based on the SS7 MOU factors, the billed volume trends, the
12 traffic that was delivered with no calling party number, the traffic that was
13 delivered with a different charge party number from the calling party
14 number, the traffic that was delivered with the two predominant charge
15 party numbers, and the financial impact of the misrouting of the traffic.

16

17 **Q.** **Please provide a further description of the access charge calculations.**

18 **A.** Exhibit KFJ-2 and KFJ-3 attached to my testimony, provide the
19 calculations.

20

21 Explanation for calculation is as follows:

22 Exhibit KFJ-2: Columns A – E identify Minutes of Use used in the billing

1 process with the jurisdictions available to the billing systems, as explained
2 in Mr. Bill Wiley's testimony. Columns G – M use the results of the SS7
3 study information, also explained in Mr. Wiley's testimony, to reallocate
4 these minutes into the proper jurisdictions. In June 2003 a Bill and Keep
5 contract was implemented between KMC and Sprint whereby local minutes
6 originated by KMC terminated directly to Sprint were no longer billable.
7 However, local minutes transiting Sprint's tandems were still billable per
8 the contracts. This is reflected in Column K. Columns O – S reflect the
9 billable MOU net of minutes already billed to KMC by Sprint.
10 Exhibit KFJ-3 outlines the compensation due Sprint when Sprint's
11 interstate and intrastate tariff and local contract rates are applied to the
12 MOU by jurisdiction from Exhibit KFJ-2. The composite rates in this
13 exhibit are based on end office switching, tandem switching and common
14 line elements, as set forth in Sprint's access tariffs. These composite rates
15 were developed by taking the total revenues in each month divided by the
16 number of minutes for that month.

17
18 Thus, the total due to Sprint for interexchange traffic terminated over local
19 interconnection facilities is \$ [REDACTED].

20

21 **Q. Does this conclude your testimony?**

22 **A.** Yes, it does.

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **REBUTTAL TESTIMONY**

3 **OF**

4 **RITU AGGARWAL**

5 **DOCKET NO. 041144-TP**

6

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

8 A. My name is Ritu Aggarwal. My business address is 6330 Sprint Parkway,
9 Overland Park, Kansas, 66251.

10

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

12 A. I am employed as a Finance Process Specialist for Sprint Corporation. In this
13 proceeding I am testifying on behalf of Sprint-Florida, Incorporated.

14

15 **Q. Please describe your educational background and work experience.**

16 A. I received a Bachelor of Science in Accounting and Business Administration
17 degree from the University of Kansas in Lawrence, Kansas in 1991.

18 I began my career with Sprint in 1996 as a Financial Analyst in Sprint's Long

19 Distance Division where I was responsible for special projects. From 1998

20 through 2002 I worked in Sprint's Business Division. During this timeframe I

21 held a variety of positions Senior Financial Analyst, Supervisor and Manager,

22 where my primary responsibilities were budgeting, forecasting and monthly

23 variance analysis of Sprint's Long Distance products. From 2002 through 2004, I

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Rebuttal Testimony of Ritu Aggarwal
Dated: May 10, 2005

1 was a Manager in Sprint's Special Pricing Group where I was responsible for
2 pricing and contract negotiations for Sprint's enterprise customers. In 2004 I
3 became Finance Specialist. I began working on Sprint LTD's revenue assurance
4 initiatives. This includes analyzing differences in Switch versus SS7 traffic
5 patterns between Sprint LTD and other carriers, including Interexchange Carriers
6 (IXCs), Competitive Local Exchange Carriers (CLECs), and wireless carriers.

7
8 **Q. Have you testified previously before state regulatory commissions?**

9 A. No.

10
11 **Q. Are you adopting the Direct Testimony of Sprint's witness Mr. Kenneth A.
12 Farnan in this proceeding?**

13 A. Yes, I am adopting Mr. Farnan's Direct Testimony, specifically beginning on
14 page 3, line 16 through page 5, line 22.

15
16 **Q. Do you have any changes to Mr. Farnan's Testimony?**

17 A. I am withdrawing Exhibit KFJ-2 and submitting Exhibit RA-1, which corrects a
18 formula error in column M.

19
20 **Q. What is the purpose of your Rebuttal Testimony?**

21 A. The purpose of my Rebuttal Testimony is to respond to the direct testimonies of
22 KMC's witnesses Marva Brown Johnson and Timothy E. Pasonski relating to
23 information provided to support Sprint's claim against KMC and the appropriate

1 amount of access charges KMC owes Sprint for the traffic that is the subject of
2 this Complaint. (Issues 5, 7 and 8, in part)

3
4 **Q. In the Direct Testimonies of Mr. Pasonksi, at page 3 lines 10-11, and Ms.**
5 **Johnson, at page 10 lines 4-5, KMC claims that only four hours of summary**
6 **of call detail records were provided by Sprint in February and March of**
7 **2004. Is this correct?**

8 A. No. Sprint provided KMC with one full day (September 10, 2003) of raw SS7
9 CDRs on February 23, 2004. (KMC may have confused Sprint's data with the
10 data KMC provided Sprint in response to Sprint's POD No. 19, which contained a
11 partial day of access CDRs for March 26, 2004.) On March 2, 2004 Sprint
12 confirmed with KMC that data provided to KMC was the SS7 CDRs for the full
13 day of September 10, 2003, not summary data as KMC apparently believed.

14
15 **Q. On page 8 lines 20-23 and page 9 lines 1-5 of her Direct Testimony, Ms.**
16 **Johnson claims that Sprint did not provide KMC with adequate supporting**
17 **detail for the back-billed access charges. Does Sprint agree?**

18 A. No. With KMC's initial bill for local and intraLata toll, Sprint provided detailed
19 information according to Ordering and Billing Forum (OBF) standards, an
20 industry standard format providing billing guidelines. Since KMC improperly
21 terminated access traffic over its local interconnection trunks with Sprint, Sprint
22 was unable to produce this standard, detailed billing information for the back-
23 billed access charges for the traffic that is the subject of Sprint's Complaint.

1 Rather, the subsequent access bills had to be processed manually. KMC can't
2 complain that Sprint's bills were in a non-standard format when it was precisely
3 KMC's actions in inappropriately terminating this traffic over local
4 interconnection facilities that created the requirement that Sprint produce manual
5 bills.

6
7 **Q. Please explain how Sprint calculated the amount of access charges KMC**
8 **owes Sprint for the improperly terminated traffic, in the absence of the**
9 **billing records that would have been generated had KMC properly**
10 **terminated this traffic.**

11 A. Sprint analyzed the SS7 traffic records to identify interexchange traffic over
12 KMC's local interconnection trunks. Once the trunks were identified, Sprint used
13 monthly SS7 CDR Summary Reports to calculate the factors using the jurisdiction
14 of the SS7 minutes of use. The jurisdiction of the minutes is based upon the
15 calling party numbers to the called party numbers in the SS7 Call Detail Records.
16 The calculated PLU and PIU were then applied to the billed minutes, utilizing
17 CASS (Sprint's Carrier Access Support System), to determine what should be
18 interstate, intrastate, and local minutes. A true-up was done to the billed usage to
19 determine the difference between what the customer was initially billed as local
20 and intraLata toll minutes and the corrected amount to include the additional
21 access charges. Appropriate rates (i.e, access rates from Sprint's interstate and
22 intrastate access tariffs and local rates from the parties' interconnection
23 agreement) were then applied to determine the additional charges to be billed to

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Rebuttal Testimony of Ritu Aggarwal
Dated: May 10, 2005

1 KMC. The interstate rates used were average yields based on interstate access
2 revenue for all carriers in Florida divided by the corresponding interstate access
3 minutes for that month. The intrastate rates used were based on previously billed
4 rates. Local rates used were composite rates based on end office switching,
5 tandem switching and common line elements per the interconnection agreement.
6 An adjustment for the difference amount was then applied to a subsequent bill
7 following the initial billing. For further clarification see Exhibit RA-2. Sprint
8 continues to monitor and analyze KMC's traffic on a monthly basis and adjust, as
9 appropriate, for access traffic.

10
11 **Q. On page 21, lines 2 and 3 of her Direct Testimony, Ms. Johnson asserts that**
12 **"June 2004 is the last month for which Sprint seeks compensation." Does**
13 **Sprint agree?**

14 **A.** No, as Sprint noted in footnotes 10, 12, 14 and 15 of its Complaint, and as shown
15 in the Exhibit RA- 2, Sprint's Complaint encompasses additional minutes of use
16 of traffic that Sprint's CDR analysis demonstrated to be interexchange traffic
17 improperly terminated over local interconnection trunks.

18
19 **Q. So, is Sprint saying that KMC continues to improperly terminate access**
20 **traffic over its local interconnection trunks with Sprint?**

21 **A.** Yes, Sprint's records show that while the minutes of use of improperly terminated
22 traffic has been significantly reduced since May 2004, instances of such improper
23 termination continue to occur.

1 Q. Does this conclude your rebuttal testimony?

2 A. Yes.

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DIRECT TESTIMONY**

3 **OF**

4 **MITCHELL S. DANFORTH**

5 **DOCKET NO. 041144-TP**

6

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

8 A. My name is Mitchell S. Danforth. My business address is 6480 Sprint Parkway,
9 Overland Park, Kansas, 66251.

10

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

12 A. I am a Manager in Strategic Sales and Account Management for Sprint Corporation.
13 In this proceeding I am testifying on behalf of Sprint-Florida, Incorporated.

14

15 **Q. Please describe your educational background and work experience.**

16 A. I received a Bachelor of Business Administration degree from the University of
17 Missouri – Kansas City in 1986.

18

19 I began my career with Sprint in 1987 as an Access Analyst I for Sprint Long Distance
20 in the Access Verification Department in Kansas City, Missouri. I was responsible for
21 the audit and payment of long distance access billing rendered by carriers that provided
22 Sprint Long Distance access to its long distance network. From 1988 – 1991 I was a
23 Senior Analyst in Access Verification performing more complicated audits of long

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Filed: February 28, 2005
Direct Testimony of Mitchell S. Danforth

1 distance access billing and reviewing work prepared by other analysts. From 1991 -
2 1994 I held two positions, Operations Analyst and Billing Manager, with United
3 Telephone Long Distance, a Sprint subsidiary. My responsibilities included managing
4 billing systems, auditing access charges, project management, financial analysis,
5 budgeting and maximizing network efficiency. In 1994 I returned to the Long
6 Distance Access Verification Department at Sprint and held multiple management
7 positions. My responsibilities included managing the daily activities of a staff of five to
8 twenty access analysts and supervisors, and coordinating the audit, payment and
9 dispute resolution of complex access charge bills. In addition, I was responsible for
10 the development of processes and financial controls for the audit of new types of
11 access charges. In 2001 I assumed the responsibility of developing an access
12 verification department within Sprint's Local Telephone Division. The department
13 was responsible for the audit, payment, dispute resolution and financial analysis for
14 inter-carrier reciprocal compensation charges billed by CLECs and wireless providers.

15
16 In 2003 I started my current position as Manager – Carrier Accounts within Strategic
17 Sales and Account Management. I am responsible for the dispute resolution and
18 settlement negotiations for open claims with CLECs and wireless providers. I am also
19 responsible for the development of internal access processes and the delivery of access
20 audit tools.

21
22 **Q. What is the purpose of your testimony in this proceeding?**

1 A. The purpose of my testimony is to support Issue 8. My testimony provides the
2 calculation and the explanation of the local reciprocal compensation overpayment
3 claim that Sprint filed against KMC Telecom.

4
5 **Q. Could you please provide an overview of your testimony?**

6 A. Yes. In my testimony, I will outline the facts concerning Sprint's overpayment of
7 reciprocal compensation charges to KMC, caused by KMC routing access traffic over
8 Sprint's local interconnection trunks. KMC is interconnected with Sprint for the
9 exchange of local traffic and ISP-bound traffic. The basis for Sprint's claim resides in
10 the FCC's Order released April 27 2001 in Dockets No. 96-98 and 99-68 entitled *In*
11 *the Matter of Implementation of the Local Competition Provisions in the*
12 *Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*
13 *("ISP Remand Order")*. Sprint compensated KMC for local reciprocal compensation
14 traffic based on the interim compensation regime set forth in the ISP Remand Order. I
15 provide support as to why Sprint's position is consistent with the FCC rules, how the
16 overpayment occurred, and why the overpayment should to be refunded to Sprint.

17
18 **Q. You refer to the ISP Remand Order. What is the ISP Remand Order,**
19 **and how does it apply to these proceedings?**

20 A. On April 27, 2001, the FCC released the ISP Remand Order. The FCC's ISP Remand
21 Order established the interim compensation regime addressing intercarrier
22 compensation of telecommunication traffic delivered to internet service providers
23 (ISPs) and the treatment and compensation of local traffic. A key element of the

1 FCC's order was the assumption that where two carriers were exchanging traffic, if
2 one carrier's traffic exceeded the other carrier's traffic by a factor of three (3), all
3 traffic above the 3:1 ratio was presumed to be ISP-bound traffic and compensated at
4 the ISP-bound traffic rate as set forth in the FCC's order. Because KMC sent non-
5 local access traffic over the local interconnection facilities between Sprint and KMC,
6 Sprint was compensating KMC for the traffic Sprint was sending to KMC, threefold
7 for each non-local access minute KMC sent to Sprint over the local interconnection
8 facilities.

9
10 **Q. Please explain how Sprint implemented the interim compensation regime**
11 **established in the ISP Remand Order.**

12 **A.** Specifically, for intercarrier compensation after February 1, 2002, Sprint compensated
13 CLECs for traffic that it presumed to be ISP-bound at the FCC rates based on the
14 following methodology outlined in the ISP Remand Order: To determine the number
15 of local minutes to be compensated at the reciprocal compensation rates specified in
16 the interconnection agreement, the number of minutes originated by the CLEC and
17 terminated to Sprint was multiplied by three. This calculation determined the number
18 of Sprint-originated minutes that were below the 3:1 ratio (presumed by Sprint to be
19 local minutes) and the number of Sprint-originated minutes that were above the 3:1
20 ratio (presumed by Sprint to be ISP-bound minutes). The Sprint-originated minutes
21 above the 3:1 ratio (presumed by Sprint to be ISP-bound minutes) and under the
22 growth cap were compensated at the rates described in the FCC's *ISP Remand Order*.
23 The interim compensation regime also provided a method to calculate and apply a

1 growth cap to the number of ISP-Bound minutes, but the growth cap is not at issue in
2 this proceeding.

3
4 **Q. On what specific section of the ISP Remand Order is Sprint basing its**
5 **overpayment claim?**

6 A. Specifically, in Paragraph 79 the FCC states that “traffic delivered to a carrier,
7 pursuant to a particular contract, that exceeds a 3:1 ratio of terminating to originating
8 traffic is ISP-bound traffic that is subject to the compensation mechanism set forth in
9 this Order.” The FCC further describes how to compensate for traffic below the 3:1
10 ratio. The ISP Remand Order states “LECs remain obligated to pay the presumptive
11 rate (reciprocal compensation rates) for traffic below a 3:1 ratio”. ILECs may elect to
12 offer the interim compensation regime on a state-by-state basis. Sprint offered the
13 interim compensation regime in Florida effective February 1, 2002. One of the
14 difficulties associated with applying a different rate to ISP-bound traffic involves being
15 able to correctly identify what constitutes ISP-bound traffic. The ISP Remand Order
16 allows carriers to apply a 3:1 ratio as a presumption for making this determination.
17 The number of minutes above the 3:1 ratio is presumed to be ISP-bound traffic and
18 compensable at the rates established by the FCC in the ISP Remand Order. All
19 minutes below the 3:1 ratio are presumed to be voice or Local Traffic as defined in the
20 interconnection agreement and compensable at the reciprocal compensation rates in
21 the interconnection agreement. In this case, three times the number of KMC-
22 originated minutes terminated by Sprint is presumed to be the number of Sprint-
23 originated voice or Local traffic terminated by KMC.

1 **Q. Please explain how application of the 3:1 ratio in this instance caused Sprint to**
2 **overcompensate KMC?**

3 A. By sending non-local access minutes over the local facilities KMC inflated the amount
4 of Local or 'voice' traffic and, as a result, Sprint overpaid reciprocal compensation by
5 three times for the minutes-of-use that KMC incorrectly routed in this fashion.
6 Because the contractual Local or 'voice' rates are substantially higher than the ISP-
7 bound traffic rates, Sprint overpaid by that rate differential multiplied by the number of
8 minutes that were sent incorrectly as if they were Local or voice traffic.

9
10 **Q. Can you please describe how Sprint overpaid KMC for the traffic**
11 **below the 3:1 ratio?**

12 A. Yes. Sprint has calculated that it overpaid KMC \$ [REDACTED]. This calculation is based
13 on [REDACTED] minutes-of-use that KMC delivered to Sprint from July 2002 – June
14 2003. Sprint, believing this traffic to be local, billed KMC for termination of these
15 minutes as local at the reciprocal compensation rate in the interconnection agreement
16 (\$.006467) and included these minutes in the 3:1 calculation.

17
18 As a result of the application of the 3:1 ratio in the ISP Remand Order, Sprint
19 overpaid KMC 3 times the volume of Local or voice minutes at the reciprocal
20 compensation rates ($[REDACTED] \text{ minutes} \times 3 = [REDACTED] \times \$0.006467 =$
21 $\$ [REDACTED]$), [REDACTED] is the number of minutes delivered by KMC and
22 terminated by Sprint and [REDACTED] is the number of minutes delivered by Sprint

1 and terminated by KMC that were presumed to be local traffic. (Please see Exhibit
2 MSD-1 for further explanation)

3

4 **Q. How is the adjustment handled for the reciprocal compensation KMC was billed**
5 **for the access minutes that were sent over the local interconnection facilities?**

6 **A.** The adjustment for the local compensation billing amount is made by Mr. Kenneth
7 Farnan in his calculation of the access charges that are due to Sprint as a result of
8 KMC misrouting this traffic as local instead of terminating access.

9 **Q. What are the appropriate payment arrangements for KMC to follow if the**
10 **Commission determines that KMC owes Sprint compensation for traffic**
11 **delivered by KMC that is subject of this complaint, and for refunds for Sprint's**
12 **overpayment of reciprocal compensation?**

13 **A.** KMC should be required to pay Sprint within ten days all monies awarded to Sprint.
14 The payment should be wired transferred to Sprint at the following bank account:

15 Bank Name: Fifth Third Bank

16 Bank City/State: Cincinnati, Ohio

17 Transit Routing Number: 0420-0031-4

18 Bank Account Number: 99942515

19

20 **Q. Would you please summarize your testimony?**

21 Yes. Sprint has overpaid KMC \$ [REDACTED] in reciprocal compensation. This occurred
22 because KMC sent 38,214,362 minutes of non-local traffic to Sprint over local
23 interconnection trunks that resulted in the treatment of that traffic as local. Sprint

1 compensated KMC for reciprocal compensation based on the ISP Remand Order
2 interim compensation regime and paid three (3) times for each minute of incorrectly
3 routed traffic. Sprint is requesting a refund of \$ [REDACTED]

4
5 **Q. Does this conclude your testimony?**

6 **A. Yes, it does.**

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)


4

5 I, JANE FAUROT, RPR, Chief, Office of Hearing
6 Reporter Services, FPSC Division of Commission Clerk and
7 Administrative Services, do hereby certify that the foregoing
8 proceeding was heard at the time and place herein stated.

9 IT IS FURTHER CERTIFIED that I stenographically
10 reported the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript constitutes a true transcription of my notes of said
13 proceedings.

14 I FURTHER CERTIFY that I am not a relative, employee,
15 attorney or counsel of any of the parties, nor am I a relative
16 or employee of any of the parties' attorney or counsel
17 connected with the action, nor am I financially interested in
18 the action.

19 DATED THIS 18th day of July, 2005.

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23
24
25


JANE FAUROT, RPR
Official FPSC Hearings Reporter
FPSC Division of Commission Clerk and
Administrative Services

(850) 413-6732