

REDACTED

041144-TP

1 for purposes of your second analysis you should not
2 consider that type of traffic, access traffic?

3 A. If it was legitimately misclassified --
4 I can't think of a reason. I'm not a network
5 expert so I can't talk to that. But if there was a
6 legitimate reason why something would appear as
7 access when it should not be access, then, yes, we
8 would exclude that.

9 Q. And in your experience since January
10 2004 when you joined this group, has the network
11 organization ever identified such traffic to you
12 and instructed you to exclude it?

13 A. We have from time to time looked at
14 call forwarding and what impact call forwarding has
15 on the traffic, and that has been very, very
16 minimal.

17 Q. Very minimal meaning less than [REDACTED]
18 [REDACTED]

19 A. Yes, less than [REDACTED].

20 Q. Less than [REDACTED] of all the
21 traffic over the trunk group?

22 A. Less than [REDACTED] of all the
23 applicable traffic -- less than [REDACTED] of the
24 traffic on the questioned trunk groups.

25 Q. I see. Is it less than [REDACTED]

1

2 A. I believe the amount was subject to
3 check, around [REDACTED].

4

Q. So that's [REDACTED] of the
5 traffic?

6

A. Correct.

7

Q. Were there any other types of traffic
8 that were looked at and considered for exclusion,
9 to your knowledge?

10

A. To my knowledge, no.

11

Q. Was the call forwarded traffic
12 excluded?

13

A. No, not in this calculation.

14

Q. And "in this calculation," you mean in
15 terms of calculating the claim for damages in this
16 case?

17

A. That's correct.

18

Q. And that's for the entire time period?

19

A. That is correct. If that was actually
20 traffic that -- well, essentially if the calls had
21 been correctly jurisdictionalized initially and
22 gone through the billing systems, then that call,
23 the call forwarded records would have automatically
24 been excluded or would not have been charged access
25 of a local.

1 system is set up from a network perspective.

2 Q. Do you have an understanding as to
3 whether it captures all of the minutes that you
4 bill?

5 A. Well, it captures the large percentage,
6 the majority of the minutes that we bill.

7 Q. The majority?

8 A. Yes, greater than [REDACTED].

9 Q. Do you know why it doesn't capture all
10 of it?

11 A. I can't answer that question, no.

12 Q. So you use the summary reports to
13 calculate the jurisdictional factors, correct?

14 A. That is right.

15 Q. Okay. Now, midway in the response you
16 referred to the calculated PLU, which we've just
17 been discussing, being applied to the billed
18 minutes from CASS. Describe in a little more
19 detail what these billed minutes are and how they
20 are generated -- not generated in the sense of
21 calls, but how you capture what those billed
22 minutes are.

23 A. I can't speak to all the details of the
24 billing systems, but the billed minutes are the
25 minutes off the switch that are passed through our

1 billing system that are what we would deem to be
2 billable minutes to KMC.

3 Q. And your billing system is separate
4 from the Agilent system?

5 A. That is correct.

6 Q. So these are potentially two different
7 buckets of minutes and calls? I mean, there is not
8 a one-to-one correspondence between the two
9 buckets?

10 A. Well, I guess I'm confused.

11 Q. I think you said earlier that on
12 average or roughly only [REDACTED] of the minutes
13 pass through the Agilent system.

14 A. Well, greater than [REDACTED] is what I
15 said, and I think it is upwards. It depends, but
16 it could be upwards of [REDACTED].

17 Q. Could it be higher than [REDACTED]
18 [REDACTED]?

19 A. Based on the bill cycle. Agilent is on
20 a calendar month basis, and the bill cycle of the
21 customer could cause the timing differences to be
22 greater than a hundred percent, yes.

23 Q. I see. So the Agilent system's month
24 could be different than what you are actually
25 billing the customer?

1 A. Sure.

2 Q. Would that be an appropriate example?

3 A. Sure, that's fine.

4 So the first line where it says billed
5 minutes of use, that shows by company how the
6 bill -- how it was initially -- by jurisdiction
7 what the minutes were on the initial bill through
8 our billing system.

9 Q. You said by company, do you mean by
10 central office?

11 A. Well, Co for us stands for company. Co
12 27 being Tallahassee, yes. So maybe it is the
13 central office itself.

14 Q. Okay. 27 is Tallahassee?

15 A. I believe so.

16 Q. I always forget which one is which. I
17 was hoping you could tell me.

18 A. Maybe that's right.

19 So based on this, the second line,
20 billed percent of total, which is just a
21 calculation based on what the -- for example, in
22 the intrastate column, the [REDACTED] minutes divided
23 by the [REDACTED]. So these were essentially the
24 PLU, if you will, that was initially billed to the
25 customer.

1 minutes. What that is identifying is, had the
2 charge party number been the same as the calling
3 party number, this is how the billing system would
4 have jurisdictionalized the traffic. So in the
5 line that says adjusted billed minutes of use under
6 interstate column, that would be [REDACTED] minutes.

7 And then we apply the rates to that to
8 determine what the corrected billing amount should
9 have been. And the additional billing of the
10 access charges is simply the difference between the
11 corrected billing and what was initially billed.

12 Q. Okay. I have a few questions on some
13 of the details on this chart. This is a chart that
14 says Sprint Carrier Markets Finance. Is that your
15 group in the lower right?

16 A. That's right.

17 Q. The SS7 percent local transit line,
18 that's the third line. For Co 27, it is listed as
19 [REDACTED] percent. What is that number and where does
20 it come from? What does it represent?

21 A. It represents the transit traffic that
22 KMC had with Sprint. It is derived from the
23 Agilent system.

24 Q. Okay.

25 A. And it is only significant to the

1 extent that we're in a Bill and Keep situation with
2 the customer.

3 Q. And that's because Bill and Keep
4 applies to end office --

5 A. Right.

6 Q. -- the end office rate element but not
7 the Tandem?

8 A. That's right. We would only bill for
9 the tandem traffic.

10 Q. This says [REDACTED] percent of the local
11 traffic went through the tandem?

12 A. That is right.

13 Q. And about seven lines down, you have
14 the State yield contract rates?

15 A. Yes.

16 Q. Are those rates that I can find in the
17 Interconnection Agreement or tariffs?

18 A. The local rate would be in the
19 Interconnection Agreement, the --

20 Q. Just so the record is clear, if I
21 can -- I'm sorry to interrupt you. But that's the
22 transit rate?

23 A. I believe -- I do not know for -- I
24 believe that is the nontransit -- or that is the
25 recip comp rate.

1 billing access to. And from that, you somehow
2 derive this interstate rate.

3 And I'm asking, you know, is it
4 necessary to perform some sort of empirical or
5 historical analysis of the traffic that is coming
6 into Florida to determine the rate, as opposed to
7 just looking in the tariff itself and finding the
8 rate.

9 A. I don't know the answer to that
10 question.

11 Q. Referring to the intrastate rate on
12 this example, the [REDACTED] for Co 27. Just to
13 confirm, when the adjustment -- the adjusted bill
14 is created for this month, or any of the months in
15 this entire exhibit, you used the intrastate access
16 rate that was first used when the bill originally
17 was sent before the Agilent study was applied?

18 A. That is right.

19 Q. And is that rate taken straight from
20 the tariff?

21 A. That is the tariffed rates.

22 Q. So what does State yield mean in the
23 description of these rates?

24 A. Well, what that means is, we did not
25 look at every call detail record and apply it to

1 every single call detail record.

2 Honestly, I mean it is looking at what
3 were the billed minutes, what were the billed
4 dollars for intrastate, and determining what that
5 rate was based on billed dollars divided by billed
6 minutes for intrastate only.

7 Q. Okay. I could ask this, and hopefully
8 this will be the last question. Are you saying
9 that when you originally billed for, in this case,
10 the [REDACTED] minutes, you billed up the charges
11 element by element?

12 A. Again, I do not know all the billing
13 system, but I do know that the billing system is
14 very, very detailed and it does jurisdictionalize
15 and rate the traffic at a very detailed level. So
16 because of that, we would use the originally billed
17 yield rate to the customer.

18 Q. Okay. But I guess my question is: Is
19 that rate that is determined for the intrastate
20 access charge and applied to the adjusted billed
21 MOU come from --

22 Well, you are simply using the same
23 rate that you used the first time around?

24 A. That's right. Which is based on all
25 the tariffs.

1 Q. And the first time around, is that
2 based on the actual calls that went through the
3 billing system?

4 A. That is right.

5 Q. Okay.

6 Has Sprint performed any analysis to
7 determine whether applying that rate to [REDACTED]
8 minutes, and extrapolating that to this adjusted
9 billed MOU of [REDACTED] million minutes is a reasonable
10 extrapolation?

11 A. Well, again, we haven't done any
12 analysis to that effect. But I would say that if
13 those [REDACTED] million minutes would have gone through
14 the billing system as intrastate minutes, then they
15 would have been applied the exact rates that it
16 should have been against those minutes.

17 Q. Right. And so the rate would have been
18 something different?

19 A. I don't know that as a fact, no.

20 Q. But it could have? There is no reason
21 to expect it to be the same down to the fourth
22 decimal point, is there, or even the third decimal
23 point?

24 A. Well, anything is possible, right?

25 Q. Well, anything is possible. But look

1 at the next month, December 2003 on the previous
2 page. There the intrastate rate is [REDACTED], correct?

3 A. That's correct.

4 Q. And then it drops down to [REDACTED] for
5 January 2004, correct?

6 A. Yes.

7 Q. So it is not clear that you can just
8 simply extrapolate, is it?

9 A. Well, again, I would say that if you
10 are looking for the exact rate for every minute,
11 then it would have to go through the billing system
12 with the correct jurisdiction and then the correct
13 rates would have -- that is the best way to apply
14 the detailed rates is to get the exact amount.

15 Q. I see. So the difference between [REDACTED]
16 and .0686 is non-material; is that your testimony?

17 A. I don't think I testified to that. I'm
18 just saying that if that [REDACTED] is the rate that
19 should have been applied, then the [REDACTED]
20 [REDACTED] adjusted billed MOU -- again, I'm still on
21 the January '04 page -- the [REDACTED] million minutes --
22 intrastate minutes should have gone through the
23 switch as intrastate rather than the [REDACTED] that
24 actually were classified as intrastate.

25 Q. Right. But you have no reason to know

1 that -- assuming you are correct and all [REDACTED]
2 [REDACTED] of those minutes from November 2003 were
3 terminated in the way that Sprint thinks they
4 should have been terminated, that the rate per
5 minute of use would have been [REDACTED]. You only know
6 that for the [REDACTED], that was the rate, correct?

7 A. That is correct.

8 Q. And just looking, for example, at --
9 you know, we talked about January 2004, it is
10 [REDACTED]; February 2004, it is [REDACTED]; March 2004, it
11 is [REDACTED]; April is [REDACTED]. Doesn't it give some
12 indication that the rate over a larger sample is
13 something closer to [REDACTED], as opposed to [REDACTED]?

14 A. I would say actually it is probably the
15 opposite. Because as you look at your minutes,
16 your billed minutes are significantly lower on the
17 intrastate bucket in April 2004 than they are in
18 November 2003. So I would say that actually if you
19 were to extrapolate that, you would say that the
20 intrastate rate is probably closer to [REDACTED], or
21 somewhere thereabouts --

22 Q. I see.

23 A. -- as the volume increases.

24 Q. Let's go to page 26 of 33, February
25 2003, we have in Co 27 -- I'll give you a minute to

1 get there. I'm sorry.

2 A. Okay.

3 Q. In Co 27, we have [REDACTED] from the
4 original bill, and the State yield rate there is
5 [REDACTED], correct?

6 A. Right.

7 Q. And then in the next month, it is
8 [REDACTED], in March of 2003, correct?

9 A. Correct.

10 Q. Those are comparable if not even
11 slightly larger numbers of minutes that were
12 originally billed, correct?

13 A. They're similar, yes.

14 Q. All right. I think we have completed
15 interrogatory 15.

16 MR. YORKGITIS: This would be a
17 pretty good time to take a break.

18 THE WITNESS: Sure.

19 (Brief recess.)

20 MR. YORKGITIS: Let's go back on the
21 record.

22 BY MR. YORKGITIS:

23 Q. Earlier you had said that there was an
24 Agilent study that was performed by Agilent --

25 A. Agilent.

1 Q. Do you have that in front of you?

2 A. I do.

3 Q. I would like to refer you to page 2
4 specifically, lines 17 to 18.

5 A. Yes.

6 Q. You state there that you're replacing
7 Mr. Farnan's Exhibit 2 with your RA-1, so as to
8 correct an error in column M; is that a fair
9 statement of your testimony there?

10 A. That is.

11 Q. Could you tell us what that formula
12 error was?

13 A. Sure. If you look at column M in the
14 row that is marked June 2003, the original, that
15 section, so today it says in this RA-1 exhibit, it
16 says [REDACTED].

17 Q. Yes.

18 A. Okay. Initially that cell was double
19 counting, it was including the local minutes twice.
20 So when we went into the Bill and Keep arrangement,
21 we started breaking out the non-transit and transit
22 minutes, so you could see that in June 2003, the
23 break-out in column J and K, and then the total is
24 in column L of the two, J, K equal L. Okay.
25 Column M was including J, K, and L.

1 A. Yes.

2 Q. And this is not done on a
3 month-to-month basis, but it is from looking at all
4 of the SS7 information that you have analyzed to
5 come up with a factor of traffic that does not have
6 CPN, is that what was done?

7 A. Yes, that's right. All the records
8 that were -- for those companies, yes, the trunk
9 groups, yes.

10 Q. For those trunk groups for this entire
11 period of time, July '02 to November '04?

12 A. Yes.

13 Q. And you came up with an [REDACTED] percent
14 factor, and then applied that to, in the first
15 table on the left the local MOUs and the intra MOUs
16 for each month?

17 A. I'm sorry. I am not following what you
18 mean by factor. What we did was we said, here is
19 the set of traffic that we cannot identify the
20 jurisdiction, we cannot jurisdictionalize because
21 there is information missing for that. And that is
22 then treated as intrastate traffic per --

23 Q. Are those numbers that come out as part
24 of your SS7 analysis using the Agilent system after
25 network -- after the network organization tells you

1 which trunk groups to look at?

2 A. Right. So they are based on the SS7
3 data, yes.

4 Q. Okay. So if the SS7 data is -- let's
5 just say for an example, you had ■ percent SS7
6 MOUs, compared to the original billed MOUs, okay?
7 And of that ■ percent MOUs, let's say ten percent
8 of that did not have CPN.

9 Would you assume that ten percent of
10 the original billed MOUs did not have CPN, or half
11 of that five percent, because you could only
12 confirm from your SS7 records that --

13 A. Well, I think that example, first of
14 all, is in the extreme because if we were only
15 collecting 50 percent, that would be a cause for
16 concern for us.

17 Q. It would be? Okay.

18 A. Yes.

19 Q. Well, let's use the extreme example. I
20 tried to use it because it had simple numbers. In
21 other words, I'm trying to understand how you
22 extrapolate your no CPN result, whether you take
23 the absolute minutes --

24 A. We take the absolute minutes and add it
25 to the intrastate minutes.

1 math.

2 Q. Sure.

3 A. We took the 100 minutes over the 800
4 minutes and applied it to the thousand billed
5 minutes in that example is how we would have done
6 that.

7 Q. So you created a factor and applied it
8 to the total original billed minutes?

9 A. That's right.

10 Q. Okay.

11 A. And, again, I believe that is in line
12 with our access tariffs.

13 Q. And if the jurisdictional analysis that
14 we talked about earlier, the PIUs and the PLUs
15 showed that 50 percent of the traffic was,
16 according to your analysis, intrastate, and ■
17 percent was local, for the percentage of traffic
18 that you said has no CPN, you assumed 100 percent
19 of that was intrastate access traffic, correct?

20 A. That is right.

21 Q. Okay.

22 Is that step shown on -- I can't think
23 what exhibit that was now. We were looking at
24 monthly summaries.

25 A. I think it is RA-2.

1 Q. That's correct. Is that step shown on
2 your RA-2?

3 A. No, not in this one.

4 Q. All right. Thank you. When you say
5 not in this one, you mean --

6 A. Not in the RA-2.

7 Q. -- not in any of the months?

8 A. Right.

9 Q. Right. Okay. Moving to the next page
10 of KJF-1. And here the second line reads: KMC
11 CLEC PLU Backbilling, hyphen, MOUs with Charge
12 Party Number different from the Calling Party
13 Number.

14 The question I have for you,
15 Ms. Aggarwal, is what was done here, and how was it
16 used to calculate the alleged access charges?

17 A. Well, this schedule simply shows the
18 percent of billed minutes we would have said are
19 where the charge party number did not match the
20 calling party number. And so, again, the first
21 section is the billed minutes adjusted using SS7
22 PLUs of that. So there were -- total billed for
23 this time period would be [REDACTED] minutes,
24 would you agree with that? In the total column in
25 that first section?

1 Q. Yes, I see that.

2 A. Okay. And of that [REDACTED] minutes,
3 [REDACTED] minutes is where there was an altered
4 charge party -- a charge party number different
5 than the calling party number.

6 The schedule is developed to simply
7 show -- I believe it was in response to one of the
8 interrogatories, and it was developed to show the
9 percent of traffic that did not match the charge
10 party number -- where the charge party number and
11 the calling party number did not match.

12 Q. Did the application of any of the
13 results on these tables affect your calculation of
14 the alleged damages?

15 A. To the extent that the charge party
16 number to called party number was local, but the
17 calling to called was access or toll traffic, then,
18 yes, it would be.

19 Q. I'm sorry. Say that again.

20 A. Okay. So this is simply showing the
21 total minutes where the two did not match the
22 calling and the called.

23 Q. Okay.

24 A. Okay? So to the extent that the
25 calling to called would indicate access traffic, so

1 It would be counted as an altered
2 number, or an altered charge number, but it would
3 not -- if it's jurisdiction-- if calling to called
4 would be local, then Agilent would treat that as
5 local.

6 Q. Okay.

7 A. All this schedule is simply showing is
8 where there is a variance between the calling and
9 the called -- I'm sorry -- the charge.

10 Q. So unlike the previous table, which
11 shows calls without calling party number, which you
12 assumed for your calculations were all intrastate
13 access minutes, here this is doing nothing more
14 than saying, here is the charge party number, the
15 same as the calling party number. It didn't
16 actually factor into your damage calculation,
17 correct?

18 A. This schedule did not.

19 Q. This schedule. Right. The page where
20 the charge party number differing from the calling
21 party number. Thank you.

22 The next page where the second line
23 reads: MOUs with charge party number as
24 ██████████ or ██████████, is it fair to say
25 that this simply tabulates based on your SS7

1 analysis the number of MOUs that showed these two
2 charge party numbers in the two markets?

3 A. This shows the percent that would be in
4 those two -- that would have those two charge party
5 numbers, yes.

6 Q. And this is based on an actual counting
7 of call-by-call -- or minute-by-minute, I should
8 say?

9 A. It is summarizing those -- yes, for
10 that charge party number.

11 Q. I see. So it is just a complete
12 coincidence looking in the upper left that the
13 percent total MOUs is exactly ■ percent in both
14 cases?

15 A. I can't answer to why, but that is what
16 the Agilent system would indicate is that they are
17 at ■ percent.

18 Q. Okay. There was no application of
19 factors here?

20 A. Right.

21 Q. To come up with the total MOU minutes
22 for charge party number ■?

23 A. It is taking the percent of -- the
24 percent of total MOU with charge party number
25 ■ and applying it to the billed minutes,

1 I believe.

2 Q. Applying the total MOUs for the charge
3 party number to the --

4 A. I'm sorry. It is the total minutes
5 that have the [REDACTED]. It is just coincidence,
6 yes, to the best of my knowledge. I can't speak to
7 KMC specifically.

8 Q. Turning several pages down, it is the
9 last chart I believe in landscape format in this
10 exhibit. I think it is the 10th page, the third
11 line reads for the period July '02 through June
12 '03.

13 A. Okay.

14 Q. Can you explain why this period is
15 broken out separately and what is done on this
16 chart?

17 A. Just one second.

18 Well, this period is broken out
19 separately because it was prior to the Bill and
20 Keep arrangement that Sprint and KMC entered, from
21 what I believe Mr. Burt or Mr. -- I'm not sure
22 exactly who has testified to that effect. So this
23 period in question is prior to the Bill and Keep
24 arrangement.

25 Q. I see. It doesn't have anything to do

1 all of that intrastate MOUs?

2 A. That's right.

3 Q. The top table which is labeled Agilent
4 Reporting, in the Intra MOU category for November
5 2003, the grand total is [REDACTED] minutes,
6 correct?

7 A. That's right.

8 Q. Isn't it the case that based upon the
9 actual SS7 records that your group looked at, that
10 it can only determine that [REDACTED] MOUs had a
11 called party number and a calling party number that
12 suggests that the calls are intrastate non-local
13 traffic?

14 A. I would say the answer is yes.

15 Q. So if we look down below, say a little
16 beyond halfway down the page, on the left-hand side
17 it says: Reallocated Billing MOUs based on Agilent
18 Percent of Total MOUs. Do you see that?

19 A. Yes.

20 Q. There under the Intra MOU column, there
21 is [REDACTED] minutes, correct?

22 A. That's correct.

23 Q. That number is based upon an
24 extrapolation of the [REDACTED] minutes that you
25 looked at, correct?

1 A. Right. It is taking the percent of the
2 ██████████, as compared to the ██████████ and
3 applying it to the billed minutes.

4 Q. I see. But you said earlier, you don't
5 know that the shortfall in the number of SS7
6 minutes you looked at was because you didn't look
7 at minutes from a certain access trunk, for
8 example, correct?

9 A. Well, I think Mr. Schaffer is better
10 qualified to answer on his process, but I do
11 believe he checks to make sure that all trunk
12 groups are recording before we do the analysis.

13 Q. And if there is a shortfall, as there
14 is in ██████████, it could be because certain
15 days were not collected; is that correct?

16 A. Yes, that is a possibility.

17 Q. Or certain hours of certain days,
18 correct?

19 A. Yes, there could be system downtime
20 that is impacting this.

21 Q. And isn't it the case that in terms of
22 Sprint's experience that the jurisdiction of
23 traffic over its network, whether it be intrastate
24 or interstate versus local as a percentage of the
25 total traffic varies as to time of day?

1 A. I have not looked at an analysis that
2 would help me draw a conclusion to that.

3 Q. You just don't know?

4 A. Right.

5 Q. But you don't know that's not the case?

6 A. I don't know either way.

7 Q. And the same with day of the week, you
8 don't know whether there is a difference in the
9 jurisdictional nature of traffic based on the day
10 of the week?

11 A. No. I don't know that for a fact.

12 Q. What about simply volumes of traffic
13 depending upon day of the week?

14 A. Again, I can speculate. I can make
15 a --

16 Q. How do you know in looking again at
17 [REDACTED] where the total MOUs that you
18 reviewed with the SS7 is [REDACTED] minutes,
19 correct?

20 A. Yes.

21 Q. And the original billed MOUs were [REDACTED]
22 [REDACTED] minutes?

23 A. Yes.

24 Q. How do you know that you did not
25 overbill when you originally billed the [REDACTED]

1 applicable trunk groups. That is what we refer to
2 as the trunk group inventory.

3 Q. So even in the case, for example, in
4 late 2002 where percent billed is ■ percent or ■
5 percent, you are saying that all the trunk group
6 information was included, or you just don't know?

7 A. All the trunk group information we had
8 was included to the best of my knowledge.

9 Q. You know that for those months?

10 A. Well, again it is probably a question
11 better for Mr. Schaffer.

12 Q. Okay. Referring further back in
13 Exhibit 3 to the spreadsheet, actually a few pages
14 from the back, it says Agilent at the top in the
15 center?

16 A. All right. Is this --

17 Q. That is it, yes. And at the bottom it
18 says: 74r101, underscore, dot, XLS.

19 Does this reflect the number of MOUs on
20 each trunk that you looked at in your SS7 analysis?

21 A. That is right.

22 Q. Is this something your group prepared?

23 A. Yes.

24 Q. And the trunk groups are identified
25 with the acronym TGSN?

1 A. Yes.

2 Q. How does this spreadsheet, if it does,
3 how does it correspond to the summary reports we've
4 been discussing?

5 A. If you look at the top section under Co
6 27; date, November '03; Transit Flag, F.

7 Q. We're on the spreadsheet toward the end
8 of the exhibit?

9 A. Yes.

10 Q. Let's just call that the Agilent
11 spreadsheet.

12 A. Okay.

13 MR. SELF: Page 13.

14 BY MR. YORKGITIS:

15 Q. Page 13.

16 A. Page 13. Where there is a subtotal
17 where it says F total, about -- you know, just a
18 few lines down from the top, do you see that?

19 Q. Yes.

20 A. Look at the total MOU, it is [REDACTED].
21 That is what was for company 27, state of Florida,
22 non-transit [REDACTED]. On the exhibit titled CLEC
23 PLU Backbilling Adjustment for KMC Telecom November
24 2003.

25 Q. Okay. I'm with you.

1 A. The next section where the Transit Flag
2 is T in the Agilent page, or the page 13, the
3 , that is the non-transit traffic in that
4 summary report.

5 Coming to the total where it says
6 Transit Flag of U in that Agilent page 13, that is
7 where it was unidentifiable.

8 Q. So did you throw that out from your SS7
9 analysis?

10 A. Yes, that's correct.

11 Q. And what might be the reasons it was
12 unidentifiable?

13 A. Not enough information available.

14 Q. You couldn't tell whether it went
15 directly to an end office or --

16 A. I can't say --

17 Q. -- to the tandem?

18 A. -- how SS7 flagged that as
19 unidentifiable.

20 Q. Okay.

21 Are you aware that as part of its
22 discovery responses in this case, that the only SS7
23 records that Sprint has provided to KMC to support
24 its calculation of damages in its complaint is one
25 month's -- or excuse me -- one day's SS7 records

1 request number 20, interrogatory 20 that for
2 November 2003, the date that was provided was
3 November 18th -- November 18, 2003. Will you
4 accept that subject to check?

5 A. I will accept that subject to check.

6 Q. Looking at the second page of the
7 Exhibit 3, on the top table that deals with Florida
8 transit and non-transit traffic for the various
9 jurisdictions in terms of MOUs, if I look -- or if
10 KMC looked and analyzed the November 18th, 2003,
11 data, could it come up with any of these numbers?

12 A. I don't know the answer to that without
13 analyzing the data.

14 Q. Would you accept the fact that for
15 November '03, the first page of Exhibit 3 says that
16 ■ percent of the billed traffic was reviewed?

17 A. ■ percent of the billed traffic was
18 captured, yes.

19 Q. And would you agree that subject to
20 check, if you like, that ■ percent of the traffic
21 did not occur on November 18th, 2003?

22 A. Of the total billed traffic?

23 Q. Yes.

24 A. I would agree with that.

25 Q. You would agree with that. Okay.

1 month; would you agree?

2 A. But in our calculation we did not
3 extrapolate one day's data into the entire month.

4 Q. Right. You looked at ■ percent of the
5 data in November 2003, correct?

6 A. We looked at all the Agilent data
7 captured in November 2003.

8 Q. Okay. Did your group decide which day
9 per month to produce for KMC?

10 A. For the day's traffic?

11 Q. Yes, in the discovery response.

12 A. No, we did not.

13 Q. And do you know whether the day that
14 was used for each month, the discovery response to
15 KMC, included the full 24 hours of the day?

16 A. The day of data that was provided to
17 KMC?

18 Q. Yes. For example, November 18th, 2003?

19 A. Yes, we tried to capture a full day of
20 traffic, 24 hours.

21 Q. A full day. But --

22 A. A full 24-hour period.

23 Q. Did you check -- once you picked
24 November 18th, 2003, did you go back and check that
25 it had a full day or maybe it only had ■ percent

1 of the billed traffic for that day?

2 A. Well, we didn't compare -- we provided
3 the total SS7 traffic for that day.

4 Q. Of what you had?

5 A. Of everything we had.

6 Q. Right. But as we see from the front of
7 Exhibit 3, some months you have ■ percent, some
8 months you have 101 percent?

9 A. As compared to billed.

10 Q. As compared to billed.

11 A. Right.

12 Q. But can you tell me what percent of
13 traffic you had on November 18th, 2003, in the SS7
14 sample you gave us, versus what was billed on that
15 day?

16 A. No.

17 Q. Did you look at that?

18 A. I don't believe our billing systems
19 provide that information. But, again, I'm not an
20 expert on billing systems.

21 Q. So you simply don't know?

22 A. I don't know.

23 Q. So in order to understand truly the
24 calculations that you did, one would have to look
25 at the ■ percent for November 2003?

1 Does your group use it with any other carriers?

2 A. Yes, we do.

3 Q. What other carriers?

4 A. I am not sure if that is considered
5 confidential.

6 MS. MASTERTON: You can go ahead
7 because it is going to be protected.

8 THE WITNESS: Okay. We have used it
9 with IXCs to determine PIU factors.

10 BY MR. YORKGITIS:

11 Q. Have you used it with any other CLECs?

12 A. Yes, we have.

13 Q. Okay. And those carriers are?

14 A. We have used it with [REDACTED] and
15 [REDACTED], as well as [REDACTED].

16 Q. Do you currently use it with those
17 carriers to the extent they still exist?

18 A. Yes, we do. We do analyze all their
19 traffic every month.

20 Q. And why just those carriers?

21 A. Those are the carriers that have access
22 over their local interconnection trunks that we
23 have seen.

24 Q. Do those carriers' Interconnection
25 Agreements provide for the intermingling of access

1 application, correct?

2 A. We're using it to assess additional
3 access charges, yes.

4 Q. Right. And you have no understanding
5 that Agilent provides support for its system when
6 used for that purpose, correct?

7 A. What do you mean when you say support
8 for the --

9 Q. Well, in other words, does it offer its
10 system as a billing system?

11 A. To my knowledge, I don't know the
12 answer to that question if they have ever offered
13 that.

14 Q. Okay. Has Sprint ever used the Agilent
15 system in the way that your group is using it with
16 respect to KMC for [REDACTED]?

17 A. I don't know.

18 Q. Has Sprint ever used the Agilent system
19 in this way with respect to [REDACTED] traffic?

20 A. I can't -- I don't know the answer to
21 that.

22 Q. What about [REDACTED]?

23 A. I don't know the answer to [REDACTED]
24 either.

25 Q. What about [REDACTED]?

1 A. Not that I recall.

2 Q. ██████?

3 A. Not in relationship to how we're using
4 it for KMC, no.

5 Q. How have you used it, if you have, for
6 ██████?

7 A. I believe -- again, that would probably
8 be an answer better answered -- or a question
9 better answered by network.

10 Q. Mr. Schaffer or Mr. Wiley?

11 A. Yes.

12 Q. Okay. What about ██████████?

13 A. It does not ring a bell.

14 Q. What about ████████?

15 A. Again, I don't -- my group has not been
16 involved in that.

17 Q. ████████ or ██████?

18 A. Not from a CLEC perspective, no.

19 Q. But from an IXC perspective?

20 A. Yes.

21 Q. What about ██████?

22 A. Not to my knowledge.

23 Q. What about ██████?

24 A. Not to my knowledge.

25 Q. For ██████ and ██████, whether for IXC

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Corrected transit for Co 39

CONFIDENTIAL

Sprint LTD (Co. 27)

CONFIDENTIAL

Sprint LTD (Co. 39)

1 what I did show is how a call was originated from --
2 line 4 is an actual correlated call record and their
3 actual records from our circuit inventory system.
4 That's what page 4 does.

5 And page 5 kind of shows how we feel the
6 traffic was going through our network, where this call
7 originated from a Quincy Telephone customer that went
8 through our tandem, and we sent it out because it was
9 PIC'd to [REDACTED]. We send it out to the [REDACTED] trunk group,
10 but all of a sudden this call comes to us from a KMC
11 local interconnection circuit. When we sent it out,
12 it was an IXC trunk group. When it came back to us,
13 it was a local interconnection trunk group.

14 Now, in reality, the way I would think a
15 call would come back to us, an interstate call that is
16 going to a Sprint end user off our tandem, it should
17 come back to us on this IXC trunk group, but in this
18 case it didn't. It came to us on a local
19 interconnection trunk group.

20 That's what this does. It puts in a picture
21 what we see in national engineering, how we see how
22 this call was routed now and what we can tell from
23 that correlated record.

24 Now, notice right here between [REDACTED] and KMC,
25 I don't have any information because I can't see that

1 portion. So what it does, I do know where it came
2 back to us from KMC. So that kind of puts it in a
3 picture, and I think it's a lot easier to tell from a
4 picture, especially our lead team, and it just
5 identifies that.

6 On page 6 is a call where I only have two
7 legs of the call. Notice on page 4 I had three legs
8 of the particular call. On page 6, this is another
9 call record where I have only two legs of the same
10 call. And here it's more of a basic one, Lawrence,
11 Kansas. This customer, I can tell where this call
12 originated, because the calling number was 785-841,
13 which is in Lawrence, Kansas. That NPA-NXX is
14 assigned to Lawrence, Kansas. That call comes to us
15 from KMC on a local interconnection trunk group with
16 that calling number where the charge number was
17 inserted, or however you want to put it.

18 And that's what those do, those kinds of
19 presentations.

20 On page 8, findings, [REDACTED] and KMC. We don't
21 know. This was really when we first started analyzing
22 records. All we know is the CIC -- you know, it just
23 kind of shows you what we had discovered. There was
24 no reason why [REDACTED] should have passed this traffic
25 through KMC. And --

1 is a mistake, but I'm pretty sure that this is a
2 Quincy Telephone customer, because that's a Quincy
3 switch, I think. I may have misidentified that trunk
4 group. I apologize.

5 But it did come to us -- the reason I put it
6 on BellSouth is because it came to us from BellSouth
7 on a rate code 2, which is their inter-toll Feature
8 Group D trunk group between BellSouth and Sprint. But
9 that NPA-NXX belongs to Quincy Telephone, just to
10 clarify.

11 Q. Okay. So the three legs that you're aware
12 of, you know what trunk group it came --

13 A. It came to our Tallahassee tandem.
14 Apparently we're the tandem provider for that
15 particular customer, or that carrier.

16 Q. And you know that you sent it out from the
17 tandem over an [REDACTED] trunk group; correct?

18 A. Yes, an IXC toll trunk group, yes.

19 Q. And you know what trunk group you received
20 it on. It came to from you the KMC local trunk group;
21 correct?

22 A. That's correct.

23 Q. And I think you said that you don't know
24 what happened from the time it went out over the MCI
25 trunk until it came back.

1 A. We do not have visibility to that, no. Nor
2 do we have visibility between our tandem when we pass
3 it off to Crawfordville. We only have access to our B
4 links, and we did not identify the A links.

5 Q. Okay. So this picture is not accurate,
6 because the solid line arrow that you've got going
7 from the Tallahassee office calling number to the
8 Tallahassee office KMC, you don't know if KMC is
9 connected to --

10 A. [REDACTED]. I don't know. I do not have
11 visibility of that.

12 Q. And flipping over to pages 6 and 7, you said
13 this was an example where you just had two legs of the
14 call that you originated in Lawrence, Kansas. Is that
15 a Sprint number?

16 A. No, that's an SBC number.

17 Q. And you know that it came from KMC's switch
18 in Tallahassee to the Sprint tandem in Tallahassee;
19 correct?

20 A. Uh-huh.

21 Q. But again, you don't know what happened from
22 the time it left the SBC customer until it got to the
23 KMC switch in Tallahassee?

24 A. No, I do not.

25 Q. On page 9, that Florida \$2.4 million number

1 was call forwarded, of only North Carolina and
2 Tennessee, of only traffic that didn't have -- I
3 mean, I don't understand what you want.

4 MR. SELF: Well, let's just drop it for a
5 moment, because I think he just discussed what I
6 was interested in knowing.

7 MS. MASTERTON: Okay.

8 BY MR. SELF:

9 Q. You said .6 of the traffic?

10 A. .6 percent.

11 MR. SELF: Okay. I want to look at
12 something else that has been produced to KMC, if
13 we could identify this as Schaffer Deposition
14 Exhibit Number 4. Excuse me. Number 3. I'm
15 sorry.

16 (Deposition Exhibit Number 3 was marked for
17 identification.)

18 BY MR. SELF:

19 Q. Okay. For the record, in the top right-hand
20 corner, this is identified as an attachment to POD No.

21 7, and the title page of this says, "Sprint IXC
22 Analysis Investigating KMC, [REDACTED] and [REDACTED] local
23 trunk group call records to help identify VoIP
24 traffic." Mr. Schaffer, have you ever seen this
25 document before?

1 identified some calls that went out from a local
2 customer that actually was charged toll for one of
3 these calls, not particular calls that we looked at on
4 this date, but someone got access for it. We know
5 they were charged toll.

6 Q. Well, I understand that, but I'm just
7 trying -- but you don't know what happened as to why
8 the CIC no longer appears in the record when it comes
9 back to you on the terminating end?

10 A. No, not particularly, no.

11 Q. Okay. On page 4, what are we looking at
12 here on page 4? What is this chart supposed to be
13 identifying?

14 A. Well, this chart identifies the CICs that I
15 identified, that I looked at on the correlated records
16 where this traffic originated to.

17 Q. So the list of carriers that appears on the
18 left-hand column, those are the presubscribed carriers
19 for the originating caller for each of the correlated
20 call records that you have?

21 A. Yes.

22 Q. And on page 5, what is this?

23 A. It's the same thing, but it's with [REDACTED]
24 trunk groups. It's the same analysis.

25 Q. Okay. And the same for page 6, except [REDACTED]

1 [REDACTED]?

2 A. Uh-huh.

3 Q. All right. And then page 8, what are we
4 looking at on page 8?

5 A. That's how many times those particular
6 telephone numbers were used on these calls that were
7 originated from those IXC carriers. That's how many
8 times the charge party numbers were used for those
9 calls.

10 Q. So looking at the very first line where the
11 charge number is 239-689 --

12 A. 2995, [REDACTED]. Those calls
13 that were PIC'd to [REDACTED], when they terminated to us,
14 they had the 239-689-2995 charge party number. And
15 the same with the 850-201-0579. I'm sorry.

16 Q. All right. So this is a situation where the
17 calling party in the case of line 2 there was PIC'd to
18 [REDACTED]?

19 A. Uh-huh.

20 Q. Okay.

21 A. Now, keep in mind, this is just correlation.
22 We're not going to see a lot of traffic that
23 terminates. This is 4/19 data, and I can only
24 identify or get this information from the calls that
25 originated from Sprint's customers where we were the

1 Sprint IXC to try to call some of the numbers and
2 tried to recreate the call that way, and we could not
3 get the records to terminate to Sprint through KMC's
4 IXC. We could not get that to work. In retrospect, I
5 wish I would have used [REDACTED] or [REDACTED], but we used
6 Sprint IXC, and they obviously didn't pass the calls
7 through the PSTN network.

8 Q. But were some of the test calls made from
9 the calling party numbers?

10 A. Not the original calling party numbers. You
11 know, that's the actual customers. No, we cannot use
12 that.

13 Q. Were any of the test calls originated using
14 VoIP telephony services?

15 A. No.

16 Q. Were the test calls made using ordinary
17 customer premises equipment, telephones?

18 A. We originated probably from KMC. And I
19 can't recall if we went back and asked someone in
20 Florida to dial an intrastate call, because we never
21 could capture the record going down that trunk, so I
22 don't think we proceeded that far.

23 Q. Has Sprint at any time made some test calls
24 to try to see what information the AMA records would
25 contain, if any, using VoIP telephony?

1 number is not a required field in the SS7.

2 Q. Of the total calls that you looked at, do
3 you know how many or what percentage did not have a
4 calling party number?

5 A. No. I don't think it was that many. We can
6 get an idea by looking at the other category, the
7 calls that terminated to Sprint using the other
8 category.

9 Q. So virtually all the calls had a calling
10 party number?

11 A. I think so. I would have to look at SS7
12 summarized data.

13 Q. Okay.

14 A. And in retrospect, it really would have been
15 to our advantage to go through -- make a test call
16 through [REDACTED] or [REDACTED] to be able to see what the
17 call data would be in the record, but at that time we
18 did not know what was going on. We did not know there
19 was a Customer X. We did not know a lot of things
20 that we know now.

21 Q. Well, but even if the call originated on a
22 broadband, a DSL circuit, assuming when it hit the
23 Public Switched Telephone Network, hit the Sprint
24 switch, and assuming the SS7 record showed a calling
25 party number, looking just at that calling party

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Emails

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KMC Correlated Call Records

(Confidential Information also is being requested for this same information as part of the Request filed August 1, 2002 for Document No. 01781-05, specifically highlighted information in response to POD No. 6)

Deposition Exhibit No. 3 of Christopher M. Schaffer

CONFIDENTIAL

IXC Analysis

(Confidential Information also is being requested for this same information as part of the Request filed August 1, 2002 for Document No. 01781-05, specifically highlighted information in response to POD No. 7)

Late-filed Deposition Exhibit No. 4 of Christopher M. Schaffer

CONFIDENTIAL

Inventory of 60 Telephone Numbers

0001

1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
2
3 Complaint of Sprint-Florida,)
4 Incorporated Against KMC)
5 Telecom III LLC, KMC)
6 Telecom V, Inc. And KMC) Docket No. 041144-TP
7 Data LLC, for failure to)
8 pay intrastate access) Filed: 6/22/2005
9 charges pursuant to its)
10 interconnection agreement)
11 and Sprint's tariffs and)
12 for violation of Section)
13 364.16(3)(a), Florida)
14 Statutes.)

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DEPOSITION OF
SAM ALLEN MILLER

June 29, 2005
1:30 p.m.

KMC TELECOMMUNICATIONS
1755 North Brown Road
Lawrenceville, Georgia

Colleen B. Seidl, CCR-B-1113, RPR, CRR

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0003

1 APPEARANCES OF COUNSEL
2

3 On behalf of Agilent Technologies, Inc. and Sam
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4

5 MARY MASTROBATTISTA, Esq.
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7
8

9 Also Present:

10 Andleeb Sonia Diedel (Sprint) (Via Phone)
Linda Bennett (Sprint) (Via Phone)
Chris Schaffer (Sprint) (Via Phone)
11 Paul Calabro (KMC)
Ronald Twine (KMC)
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0004

1 (Reporter disclosure made pursuant to
2 Article 8.B. of the Rules and Regulations the
3 Board of Court Reporting of the Judicial Council
4 of Georgia.)

5 MR. YORKGITIS: We can get started then.
6 Why don't we at the beginning just identify
7 everybody that is here.

8 This is Chip Yorkgitis of Kelley Drye &

9 Warren, present in Atlanta, representing KMC.

10 MR. SELF: This is Floyd Self of the
11 Messer, Caparello & Self law firm, also
12 representing KMC. And we also have two of the
13 KMC witnesses, Ron Twine and Paul Calabro.

14 MS. MASTERTON: This is Susan Masterton
15 representing Sprint.

16 MS. MASTROBATTISTA: This is Mary
17 Mastrobattista from the Legal Department of
18 Agilent Technology.

19 THE WITNESS: This is Sam Miller with
20 Agilent as well.

21 MS. KEATING: This is Beth Keating and Lee
22 Fordham for Commission Staff.

23 Before you all get started, could I just
24 make a note of something. Susan, whenever you
25 were asking questions in the last deposition, we

0005

1 had a really hard time hearing you in
2 particular.

3 MS. MASTERTON: I was probably the
4 farthest away from the phone, so sorry.

5 MS. KEATING: I thought I would mention
6 that.

7 MR. YORKGITIS: All right.

8 Why don't the Sprint representatives on
9 the phone would just introduce themselves again
10 for the reporter.

11 MS. BENNETT: This is Linda Bennett.

12 MS. AGGARWAL: This is Ritu Aggarwal with
13 Sprint.

14 MS. DIEDEL: Andleeb Diedel.

15 MR. SCHAFFER: Chris Schaffer.

16 MR. YORKGITIS: We have -- well, maybe
17 when I get to there, we can be more specific,
18 but we have in the prior depositions in this
19 case in certain instances designated the entire
20 transcript as confidential, because there are
21 certain materials that have been used or
22 discussed in the deposition provided by one
23 party or the other and designated as
24 confidential.

25 In the case of this deposition, we may be

0006

1 using some of those materials that I believe
2 were provided by Agilent to Sprint and then
3 Sprint in turn has designated those as
4 confidential; and as we have two representatives
5 here from Agilent, we'll be using those and
6 afterward we can designate what is confidential
7 within this transcript and provide a corrected
8 version.

9 MS. MASTROBATTISTA: Just to be clear up,
10 though, front, the entire deposition will be
11 treated as confidential?

12 MR. YORKGITIS: Provisionally until such
13 time as you have the opportunity to review the

14 transcript.
15 MS. MASTROBATTISTA: And then we'll mark
16 which sections we consider to be.
17 MR. YORKGITIS: That is the idea.
18 Good afternoon, Mr. Miller.
19 MR. MILLER: Good afternoon.
20 MR. YORKGITIS: My name is Chip Yorkgitis
21 and I'm with firm of Kelly Drye and Warren, LLP,
22 from Washington, D.C. I am representing KMC in
23 a lawsuit between Sprint and KMC entities. I
24 want to thank you for coming out today for your
25 deposition. I'm going to be asking you a series

0007

1 of questions today. If at any time you need me
2 to slow down or ask the question again, rephrase
3 it, please just let me know, because I do want
4 to be sure that you understand the questions
5 before responding.

6 MR. MILLER: Okay.

7 MR. YORKGITIS: So now we'll have you
8 sworn in by the court reporter.

9 SAM ALLEN MILLER,
10 having been first duly sworn, was examined and
11 testified as follows:

12 EXAMINATION

13 BY MR. YORKGITIS:

14 Q. Would you state your full name for the
15 record.

16 A. Sam Allen Miller.

17 Q. Would you provide your current business
18 address?

19 A. 1410 East Renner Road, Suite 100,
20 Richardson, Texas, 75093.

21 MR. YORKGITIS: Can the folks on the phone
22 hear okay the deponent's responses?

23 MS. KEATING: Yes.

24 Q. (By Mr. Yorkgitis) By whom are you
25 currently employed and in what capacity?

0008

1 A. Agilent Technologies as a solution
2 architect.

3 (Agilent Exhibit 1 was marked for
4 identification.)

5 MR. YORKGITIS: I've had marked as
6 Deposition Exhibit Agilent 1 a subpoena duces
7 tecum for deposition, which I'm handing now to
8 the witness.

9 Q. (By Mr. Yorkgitis) Mr. Miller, have you
10 seen this document before?

11 A. I have.

12 Q. Are you appearing in response to the
13 receipt of that subpoena?

14 A. I am.

15 Q. Thank you.

16 Describe for me your responsibilities at
17 Agilent.

18 A. Is this during the time of the study or

19 currently?

20 Q. Currently what are your areas of
21 responsibilities?

22 A. I cover pre and post sales support from a
23 technical perspective.

24 Q. Describe what you mean by pre and post
25 sales?

0009

1 A. It would be working with the customer to
2 make sure they understand new products and services
3 that Agilent offers from a technical perspective.

4 Q. Does that mean you provide technical
5 support as that term is commonly used in the computer
6 industry?

7 A. In some respects, yes.

8 Q. Does that include on-site visits to
9 customers?

10 A. Yes.

11 Q. How long have you been in that position?

12 A. About three years.

15 Q. Prior to your current position at Agilent,
16 which you have held for three years, were you also
17 employed by Agilent?

18 A. Yes.

19 Q. In what capacity?

20 A. In a consulting capacity.

21 Q. So, were you an employee of Agilent?

22 A. Yes. Yes.

23 Q. And what type of consulting did you do?

24 A. Custom studies, report development, things
25 of that nature.

0011

1 Q. These are custom studies requested by
2 customers?

3 A. Correct.

4 Q. And when did you leave that position as a
5 consultant?

6 A. To the best of my knowledge, it was about
7 three years ago.

8 Q. Mid 2002?

9 A. Potentially, yeah. I mean for a period I
10 was kind of doing both roles, so it wasn't a clear
11 cutover date.

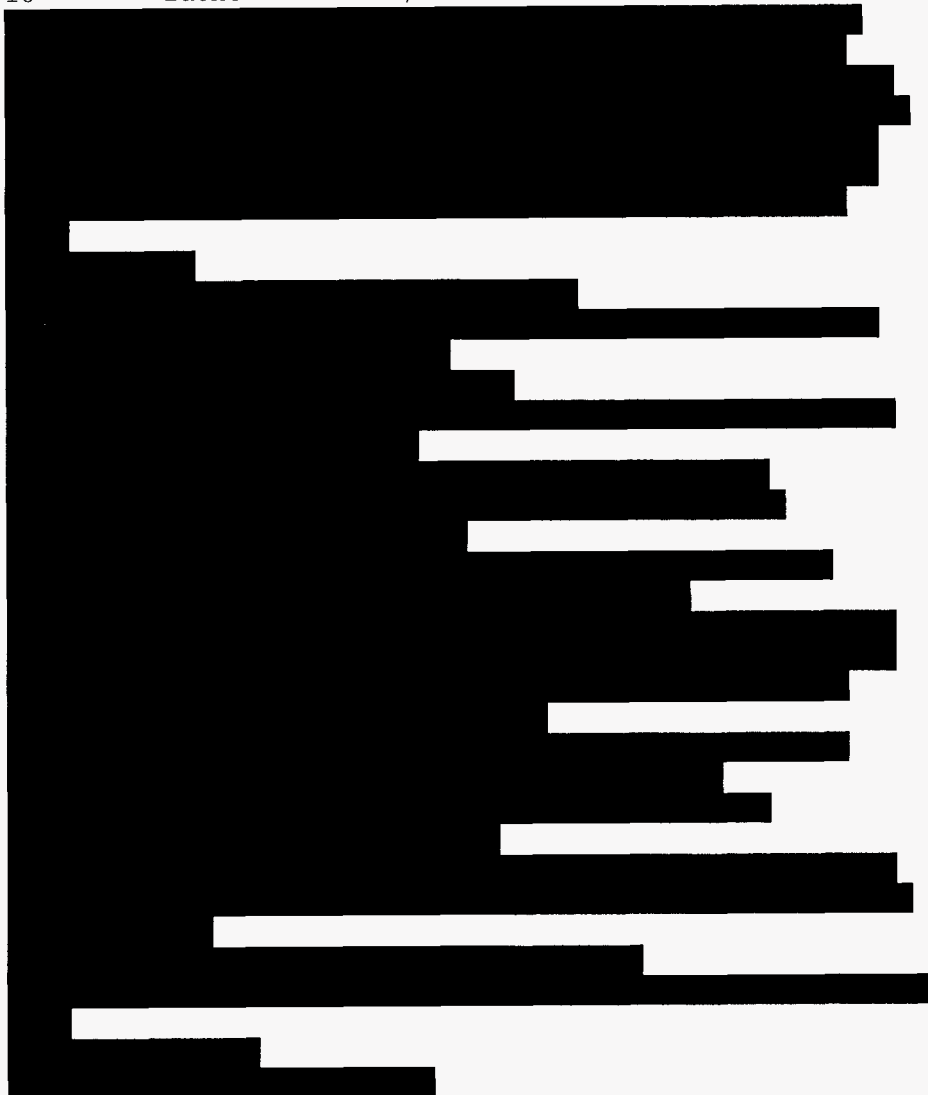
12 Q. Mr. Miller, have you been deposed before?

13 A. No.

14 Q. Have you appeared in any court or
15 commission hearings as a witness before?

16 A. No.

17 (Agilent Exhibit 2 was marked for
18 identification.)



[REDACTED]

[REDACTED]

16 Q. Okay. Can you tell whether this was open
17 or saved by Sprint or by Agilent?

18 A. I don't know.

19 Q. Do you know the form in which this
20 document was provided to Sprint in terms of, was it
21 in Word format, PDF format?

22 A. It was in Microsoft Word format.

23 Q. Were there five earlier revisions that
24 were prepared by Agilent?

25 A. Yes.

0023

1 Q. Were these all provided to KMC?

2 A. No.

3 Q. Was any version other than Revision 6
4 provided to KMC?

5 A. Not to my knowledge.

6 Q. Did you bring the earlier revisions with
7 you today?

8 A. I may have them electronically on my
9 laptop.

10 MR. YORKGITIS: Can we go off the record a
11 second.

12 (Discussion off the record.)

13 MR. YORKGITIS: We're back on the record.

[REDACTED]

[REDACTED]

[REDACTED]

9 MS. MASTERTON: Can we take a break.
10 MR. YORKGITIS: Just one or two more
11 questions.

[REDACTED]

18 MR. YORKGITIS: We can take a break.
19 We're going to take a short break. I will
20 put you on moot and everyone here will remind me
21 to make sure that you come off moot when we're
22 ready to start.
23 (A recess was taken.)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16 MS. MASTROBATTISTA: Objection.

17 MR. YORKGITIS: The basis?

18 MS. MASTROBATTISTA: Attorney-client
19 privilege.

20 MR. YORKGITIS: I believe a third party
21 was present at these meetings, so I don't
22 believe the privilege applies.

23 Do you have a joint defense agreement?

24 MS. MASTROBATTISTA: No.

25 MS. MASTERTON: No.

0073

[REDACTED]

[REDACTED]

16 MR. YORKGITIS: Why don't we take a short
17 break while I confer with my colleagues.
18 THE WITNESS: Okay.
19 (A recess was taken.)

[REDACTED]

[REDACTED]

12 MR. YORKGITIS: I have no further
13 questions.
14 THE WITNESS: Okay.
15 MR. YORKGITIS: Does the Staff have any
16 questions for Mr. Miller?
17 MS. KEATING: Staff has no questions.
18 MS. MASTERTON: I don't have any
19 questions.
20 MS. MASTROBATTISTA: I don't have any
21 questions. I just want to clarify that Exhibit
22 4, which was a Revision 3 to this set, will be
23 marked as confidential in accordance with the
24 other copies of the study.
25 MR. YORKGITIS: Yes, it will be.
0085
1 MS. MASTROBATTISTA: And the other
2 versions as well.
3 MS. MASTERTON: Did you put those in as
4 deposition exhibits, the other versions of
5 Exhibit 4, so we can get copies of those.
6 MR. YORKGITIS: I think we should identify
7 them.
8 MS. MASTERTON: Yes, I didn't get copies.
9 MR. YORKGITIS: I have extra copies here.
10 Go off the record.
11 (Discussion off the record.)

12 MR. YORKGITIS: We're back on the record
13 briefly just to mark certain documents provided
14 to us during the deposition as deposition
15 exhibits.

16 I have five documents all entitled as
17 Consulting Proposal For KMC Access Bypass Study
18 or Consulting Statement of Work for KMC Access
19 Bypass Study. These were provided to us by
20 Mr. Miller during the course of his deposition
21 taken from his hard drive.

22 (Agilent Exhibit 5 was marked for
23 identification.)

24 Q. (By Mr. Yorkgitis) Mr. Miller, I'm going
25 to hand you what we have marked as deposition Agilent
0086

1 Agilent Deposition Exhibit 5 entitled Consulting
2 Proposal For KMC Access Bypass Study. To the best of
3 your knowledge, is this version 1 of that proposal.

4 A. Yes.

5 (Agilent Exhibit 6 was marked for
6 identification.)

7 Q. (By Mr. Yorkgitis) And I'm handing to you
8 a document with the same name. It's been marked as
9 Agilent Deposition Exhibit 6. Is this the second
10 version of the consulting proposal?

11 A. To the best of my knowledge, yeah.

12 (Agilent Exhibit 7 was marked for
13 identification.)

14 Q. (By Mr. Yorkgitis) I'm now handing you
15 document entitled Consulting Statement of Work For
16 KMC Access Bypass Study, it's been marked as Agilent
17 Deposition Exhibit 7.

18 Mr. Miller, is this, in fact, the third
19 version of the consulting statement of work for the
20 bypass study?

21 A. Yes.

22 (Agilent Exhibit 8 was marked for
23 identification.)

24 Q. (By Mr. Yorkgitis) I have also had marked
25 as Agilent Deposition Exhibit 8, which is entitled
0087

1 Consulting Statement of Work For KMC Access Bypass
2 Study. Is this the fourth version of the consulting
3 Statement of Work for the KMC study?

4 A. Yes.

5 (Agilent Exhibit 9 was marked for
6 identification.)

7 Q. (By Mr. Yorkgitis) And finally I have
8 what has been marked as Agilent Deposition Exhibit 9.
9 It also is entitled Consulting Statement of Work For
10 Access Bypass Study. Is this the fifth version of
11 the Statement of Work?

12 A. Yes.

13 Q. Were all of these drafts prepared by you
14 or under your direction?

15 A. Yes.

16 Q. And were all of them, to your knowledge,

17 shared with KMC?
 18 A. Yes.
 19 Q. Or excuse me, with Sprint?
 20 A. Yes.
 21 Q. Now they have been shared with KMC?
 22 A. With Sprint, yes. With Supply Chain
 23 Management, yes.
 24 MR. YORKGITIS: These will all be marked
 25 as confidential and treated as such in

0088

1 accordance with the applicable confidentiality
 2 order in this case.
 3 MS. MASTROBATTISTA: Thank you.
 4 MR. YORKGITIS: With that, I have no
 5 further questions for you. I want to thank you
 6 for being here today and wish you a good flight
 7 back.

8 (Deposition concluded at 4:40 p.m.)
 9
 10 (Pursuant to Rule 30(e) of the Federal
 11 Rules of Civil Procedure and/or O.C.G.A.
 12 9-11-30(e), the deponent and/or a party having
 13 requested the right to review the deposition,
 14 making corrections and/or changes and signing,
 15 for that purpose the errata pages have been
 16 annexed hereto.)

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 0089

1	INDEX TO EXAMINATIONS		
2	Examination		Page
3			
4	Examination by Mr. Yorkgitis		7
5	- - -		
6			
7	INDEX TO EXHIBITS		
8	Confidential		
9	Agilent		
10	Exhibit	Description	Page
11	1	Subpoena Duces Tecum	8
12	2	Consulting statement of work for: KMC Access Bypass Study	11
13	3	Study Results For KMC Access Bypass Study, dated February 16, 2005, Revision 6	19
14	4	Study Results For KMC Access Bypass Study, Revision 3	62
15			

16	5	Consulting Proposal For KMC Access Bypass Study, Version 1	85
17			
18	6	Consulting Proposal For KMC Access Bypass Study, Version 2	86
19	7	Consulting Statement of Work For KMC Access Bypass Study, Version 3	86
20			
21	8	Consulting Statement of Work For KMC Access Bypass Study, Version 4	86
22	9	Consulting Statement of Work For KMC Access Bypass Study, Version 5	87

23
24

(Original Exhibits 1 through 9 have been attached to the original transcript.)

0090

C E R T I F I C A T E

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STATE OF GEORGIA:
COUNTY OF FULTON:

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I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 88 represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

18
19
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21

This, the 30th day of June, 2005.

Colleen B. Seidl, CCR-B-1113
My commission expires on the
7th day of October, 2006.

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23
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0091

COURT REPORTER DISCLOSURE
[ORIGINAL ON FILE]

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2
3

DEPOSITION OF: SAM ALLEN MILLER

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7

Pursuant to Article 8.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia which states: "Each court reporter shall tender a disclosure form at the time of the taking of the deposition stating the arrangements made for the reporting services of the certified court reporter, by the certified court reporter, the court reporter's employer, or the

8 referral source for the deposition, with any party to
9 the litigation, counsel to the parties or other
10 entity. Such form shall be attached to the
11 deposition transcript," I make the following
12 disclosure:

13 I am a Georgia Certified Court Reporter. I am
14 here as a representative of Brown Reporting, Inc.

15 Brown Reporting was contacted by the offices of
16 Messer, Caparello & Self, P.A.
17 to provide court reporting services for the
18 deposition. Brown Reporting will not be taking this
19 deposition under any contract that is prohibited by
20 O.C.G.A. 15-14-37(a) and (b).

21 Brown Reporting has no contract/agreement to
22 provide reporting services with any party to the
23 case, any counsel in the case, or any reporter or
24 reporting agency from whom a referral might have been
25 made to cover this deposition. Brown Reporting will
26 charge its usual and customary rates to all parties
27 in the case, and a financial discount will not be
28 given to any party to this litigation.

29 /s/ Colleen B. Seidl, CCR-B-1113 6/29/05

30 Signature of attorneys present: Date:

31 /s/ Floyd Self 6/29/05

32 /s/ Susan S. Masterton 6/29/05

33 /s/ Mary Mastrobattista 6/29/05

34 /s/

35 Return this form after review and/or signatures to
36 the court reporter for inclusion in the record.

37 Please use reverse side for additional signatures.

0092

1 DEPOSITION OF SAM ALLEN MILLER /CBS

2 I do hereby certify that I have read all
3 questions propounded to me and all answers given by
4 me on the 29th day of June, 2005, taken before
5 Colleen B. Seidl, and that:

6 1) There are no changes noted.

7 2) The following changes are noted:

8 Pursuant to Rule 30(e) of the Federal Rules of
9 Civil Procedure and/or the Official Code of Georgia
10 Annotated 9-11-30(e), both of which read in part:
11 Any changes in form or substance which you desire to
12 make shall be entered upon the deposition...with a
statement of the reasons given...for making them.
Accordingly, to assist you in effecting corrections,
please use the form below:

13 Page No. Line No. should read:

14 Page No. Line No. should read:

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14 Page No. Line No. should read:
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16 Page No. Line No. should read:
17 Page No. Line No. should read:
18 Page No. Line No. should read:
19 Page No. Line No. should read:
20 Page No. Line No. should read:
21 Page No. Line No. should read:
22 Page No. Line No. should read:
23 Page No. Line No. should read:
24 Page No. Line No. should read:

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0093

1 DEPOSITION OF SAM ALLEN MILLER /CBS

2 Page No. Line No. should read:
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8 Page No. Line No. should read:
9 Page No. Line No. should read:
10 Page No. Line No. should read:
11 Page No. Line No. should read:
12 Page No. Line No. should read:

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14

If supplemental or additional pages are necessary,
15 please furnish same in typewriting annexed to this
16 deposition.

17

SAM ALLEN MILLER

18

Sworn to and subscribed before me,
19 This the day of , 20 .

20

Notary Public
21 My commission expires:

22
23
24
25

CONFIDENTIAL

**Consulting Statement of Work for: KMC Access Bypass Study
(Versions)**