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**HAND DELIVERY**

October 19, 2004

Commissioner Charles Davidson  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

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RE: 031047 KMC/Sprint Arbitration

Dear Commissioner Davidson:

Commission staff has asked Sprint to provide a written statement of its position on the revisions to Issue 2 circulated by staff to reflect your comments at the August 31, 2004 prehearing conference. The revised issue statement prepared by staff is attached to this letter as Attachment A.

At the prehearing in this docket held on August 31, 2004, the parties indicated that they had reached agreement on all of the outstanding issues originally identified for arbitration, except Issue 2, which addresses the appropriate treatment of traffic transported using internet protocol. Pursuant to the Order on Procedure, Order No. PSC-04-0563-PCO-TP, issued in this docket on June 1, 2004, Issue 2 was stated as follows:

- 2. How should the parties identify, exchange and compensate traffic transported in whole or in part over internet protocol?

At the prehearing you indicated that you desired more specificity in the phrasing of the issue to adequately frame the issue for resolution by the Commission. Staff drafted the revisions to Issue 2 contained in Attachment A to reflect the necessary additional specificity you identified at the prehearing.

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- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
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Sprint has no objection to the revised issue as proposed by staff. Sprint believes that the additional subissues included in the revised draft reflect the information that is relevant to a determination of this issue by the Commission and that Sprint has addressed in its prefiled testimony. This prefiled testimony, coupled with the responses to discovery on the VoIP issue conducted by the parties, provides sufficient evidence for the Commission to resolve the issue as revised. (Sprint has suggested some minor revisions to staff's draft of the issue for clarification purposes. Sprint's suggested changes are reflected in Attachment B to this letter.)

At a September 9, 2004 informal conference call involving the parties and staff to discuss staff's draft of revisions to Issue 2, KMC requested that a specific issue be added to address whether the Commission should defer a ruling on Issue 2 until the FCC acted on a pending rulemaking docket to address internet protocol services and to address what

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compensation mechanism should apply between the parties pending the FCC's ruling in that docket (KMC specifically is advocating that "bill and keep" should apply during this interim time period). Sprint indicated that it did not object to adding this issue as a subissue, stated in a neutral manner, and KMC committed to develop language to reflect this agreement. The parties also discussed and agreed that, based on the issue circulated by staff as revised pursuant to the parties' discussions, no additional testimony or discovery would be necessary to augment the record.

However, contrary to the commitments made on the September 9<sup>th</sup> call, and without any basis in the record, KMC completely rewrote Issue 2 and, among other things, narrowed the issue to address only a subset of the internet traffic that is in dispute between the parties. (KMC's proposed draft is attached to this letter as Attachment C.) KMC indicated in a footnote to its issue statement that it believes that two FCC decisions, namely the *pulver.com* decision and the AT&T Declaratory Statement decision, address the treatment of certain types of internet protocol traffic and, therefore, there is no longer a dispute between the parties on these types of traffic. Sprint agrees that these decisions are relevant to the Commission's consideration of the proper treatment of VoIP traffic under the parties' interconnection agreement. However, Sprint disagrees that the parties' acknowledgement of these decisions represents a resolution of the dispute between the parties as to how the decisions should be reflected in the language of the interconnection agreement.

Both of these decisions were in existence at the time the parties filed their testimony in this docket. Nothing in KMC's prefiled testimony indicates that it is in agreement with Sprint's interpretation of the decisions, particularly the decision in the AT&T Declaratory proceeding. In fact, KMC's prefiled testimony indicates the opposite. Nor have the parties entered into any stipulation or other agreement subsequent to the filing of this testimony that would reflect the parties' mutual understanding as to how these decisions apply to VoIP traffic exchanged between the parties. Therefore, KMC's statement of the issue does not adequately reflect the issue in dispute between the parties, as it was presented in KMC's Petition for Arbitration and Sprint's Response, and as it has been addressed in the parties' testimony and further explored through the discovery process.

While Sprint cannot agree to narrowing the issue in the way KMC has proposed, in an effort to reach agreement on the revision of Issue 2 prepared by staff at your direction, Sprint offered alternative language (attached to this letter as Attachment D) to incorporate the additional subissue the parties had agreed to on the September 9th conference call to address the pending FCC docket. KMC rejected Sprint's alternative proposal stating that it does not believe the parties can reach agreement on the revised issue and seeking your assistance in resolving this "impasse."

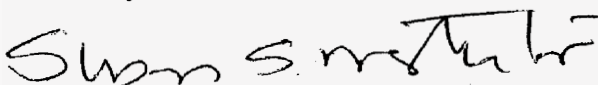
In summary of Sprint's position on revising the statement of Issue 2, Sprint is agreeable to the revised issue as drafted by staff based on your guidance at the prehearing conference. Sprint has suggested some revisions to the staff-drafted issue, but would accept the issue as drafted by staff without any changes. In addition, Sprint could agree to the addition of a subissue specifically addresses the implications of the pending FCC docket, as suggested by KMC and reflected in Attachment D to this letter. Finally, Sprint

would not object to reverting to the issue as originally agreed to by the parties, reflected in the procedural order, which provided the framework for the parties' prefiled testimony and previous discovery requests. The parties are cognizant of the guidance you provided in at the prehearing and these points could be addressed by the parties in their briefs.

If any of the above alternatives are adopted, Sprint would continue to agree that the existing prefiled testimony and discovery responses relating to VoIP provide a sufficient record for a ruling by the Commission on the issue. However, Sprint believes that the current record is not sufficient to address the issue as proposed by KMC. To the extent that the issue as framed by KMC is approved, Sprint would need and requests the opportunity to file additional testimony and conduct additional discovery in order to adequately present its position on the redrafted issue. (Additional testimony is necessary because the issue as drafted by KMC attempts to subdivide and differentiate between types of traffic transported over the internet in a manner that is not contemplated or addressed in the existing prefiled testimony and was not explored previously through discovery.)

In addition, although the parties previously agreed to waive their rights to cross-examine witnesses at a hearing, this agreement was based on the original statement of the issue and the existing testimony and discovery filed based on the issue proposed at that time. To the extent the issue statement is altered in the manner KMC suggests, Sprint believes that a waiver of the right to cross-examine witnesses at a hearing would no longer be appropriate and would request that a new procedural schedule be established, including time frames for filing additional testimony, for conducting additional discovery and for a hearing, so that the parties can proceed expeditiously to resolve the one remaining issue and finalize the new interconnection agreement that will result from the completion of this arbitration. Finally, to the extent that any alternative revisions to the issue that Sprint has not yet had an opportunity to review are proposed or adopted, Sprint reserves it right to similarly request the opportunity to file additional testimony, conduct additional discovery, and cross-examine witnesses at a hearing, should Sprint conclude this to be necessary based on the scope of any revisions.

Sincerely,



Susan S. Masterton  
Attorney for Sprint

Cc: Parties of Record  
Lee Fordham, Esq.  
Katrina Tew

DN 031047-TP

2. How should the parties identify, exchange and compensate each other for traffic transported in whole or in part using Internet protocol? In responding to this question, please address the following aspects, as pertinent:
- (a) What types of traffic are originated on one party's network and terminated on the other party's network? Approximately how much of each traffic type is originated on one party's network and terminated on the other party's network?
  - (b) Which of the traffic types identified in (2)(a) are initiated or routed utilizing Internet protocol?
  - (c) How are each of the traffic types identified in (2)(a) physically routed and terminated to the other party's network, and specifically how is Internet protocol used or involved in the routing of the traffic?
  - (d) For each of the traffic types identified in (2)(b), what form of intercarrier compensation, if any, is currently paid to the terminating carrier?
  - (e) For each of the traffic types identified in (2)(b), what form of intercarrier compensation should be paid on a going-forward basis, if any, and why?
  - (f) For each of the traffic types identified in (2)(b), what existing FCC precedent supports your classification of this traffic and the payment (or nonpayment) of intercarrier compensation?
  - (g) For each of the traffic types identified in (2)(b), can the terminating carrier identify the specific traffic type? If so, how? What reporting and auditing requirements, if any, are needed?

DN 031047-TP

2. How should the parties identify, exchange and compensate each other for traffic transported in whole or in part using Internet protocol? In responding to this question, please address the following aspects, as pertinent:

(a) What types of traffic does each party terminate on the other party's network? Identify the approximate quantity, in terms of minutes of use, of each traffic type that each party terminates on the other party's network?

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(b) What is the jurisdiction of each type of traffic identified in (2)(a)?

(c) Which of the traffic types identified in (2)(a) are initiated or routed utilizing Internet protocol?

(d) How are each of the traffic types identified in (2)(a) physically routed and terminated to the other party's network, and specifically how is Internet protocol used or involved in the routing of the traffic?

(e) For each of the traffic types identified in (2)(c), what form of intercarrier compensation, if any, is currently paid to the terminating carrier?

(f) For each of the traffic types identified in (2)(c), what form of intercarrier compensation should be paid on a going-forward basis, if any, and why?

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(g) For each of the traffic types identified in (2)(c), what existing FCC or FPSC precedent supports your classification of this traffic and the payment (or nonpayment) of intercarrier compensation?

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(h) For each of the traffic types identified in (2)(c), can the terminating carrier identify the specific traffic type? If so, how? If not, what information does the party sending the traffic need to provide to the party terminating the traffic to allow the party terminating the traffic to identify the specific traffic type? What reporting and auditing requirements, if any, are needed?

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DN 031047-TP

Revised Issue 2

2. (a) Should the Commission consider, or defer to the FCC's ongoing, comprehensive *IP-Enabled Services* rulemaking, the treatment of traffic that is exchanged between the Parties and transported in whole or in part using Internet protocol, and that does not fall within the scope of either the FCC's *pulver.com* decision or *AT&T Declaratory Ruling*?<sup>1</sup>

(b) Should the Commission decide, in issue 2.(a), to defer the treatment of traffic transported in whole or in part using Internet protocol to the FCC, then should such traffic (that does not fall within the scope of either the FCC's *pulver.com* decision or *AT&T Declaratory Ruling*) be exchanged by the Parties on a bill-and-keep basis until the FCC *IP-Enabled Services* rulemaking is concluded?

(c) Assuming the Commission decides, in response to issue 2.(a), that traffic transported in whole or in part using Internet protocol that falls outside the scope of both the FCC's *pulver.com* decision and *AT&T Declaratory Ruling* should be subject to some type of compensation in advance of the FCC's decision in the *IP-Enabled Services* rulemaking, how should the parties identify, exchange and compensate each other for such traffic? In responding to this question, please address the following aspects, as pertinent:

- (1) What types of traffic transported in whole or in part using Internet protocol that does not fall within the scope of either the FCC's *pulver.com* decision or *AT&T Declaratory Ruling*, if any, does each party deliver to the other party for termination on the other party's network? Identify the approximate quantity, in terms of minutes of use or other appropriate measure, of each traffic type that each party delivers to the other party for termination on the other party's network?
- (2) What is the jurisdiction of each type of traffic identified in (2)(c)(1)? How is such jurisdiction determined? How will the Commission include third-party carriers in the determination of the jurisdiction of such traffic?
- (3) How are each of the traffic types identified in (2)(c)(1) physically routed and terminated to the other party's network, and specifically how is Internet protocol used or involved in the routing of the traffic? From which carriers does this traffic originate?
- (4) To what extent is each party or its affiliates originating each type of traffic identified in (2)(c)(1) in Florida? What compensation is each party or its affiliates paying to other carriers for the traffic that it originates?

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<sup>1</sup> KMC agrees with Sprint that traffic transported in whole or in part using Internet protocol that falls within the scope of either the FCC's *pulver.com* or *AT&T Declaratory Ruling* decisions from 2004 is governed by and subject to the decisions in those rulings.

- (5) For each of the traffic types identified in (2)(c)(1), what form of intercarrier compensation, if any, is currently paid to the terminating carrier? Is the terminating carrier receiving a different level of compensation from any other carrier(s) for terminating each such traffic type? If so, explain in detail and provide the terms of such arrangements.
- (6) For each of the traffic types identified in (2)(c)(1), what form of intercarrier compensation should be paid on a going-forward basis, if any, and why, and who has jurisdiction to decide?
- (7) For each of the traffic types identified in (2)(c)(1), what existing FCC or FPSC precedent supports your classification of this traffic and the payment (or nonpayment) of intercarrier compensation? Is such traffic information services or telecommunications services? How is this issue determined? To what extent must third-party carriers be involved to determine whether such traffic is information services or telecommunications services?
- (8) For each of the traffic types identified in (2)(c)(1), can the terminating carrier identify the specific traffic type? If so, how? If not, what information does the party sending the traffic need to provide to the party terminating the traffic to allow the party terminating the traffic to identify the specific traffic type? What information do third parties sending the traffic to the party directly sending the traffic to the terminating party need to provide to the party directly sending the traffic to the terminating party and the party terminating the traffic to allow the party terminating the traffic to identify the specific traffic type? What reporting and auditing requirements, if any, are needed?

DN 031047-TP

2. How should the parties identify, exchange and compensate each other for traffic transported in whole or in part using Internet protocol? In responding to this question, please address the following aspects, as pertinent:

(a) Should the Commission consider, or defer to the FCC's IP-Enabled Services rulemaking, the treatment of traffic that is exchanged between the Parties and transported in whole or in part using Internet protocol?

(b) Should the Commission decide, in issue 2.(a), to defer the treatment of traffic transported in whole or in part using Internet protocol to the FCC, how should such traffic be exchanged and compensated by the Parties until the FCC IP-Enabled Services rulemaking is concluded?

(c) What types of traffic does each party terminate on the other party's network? Identify the approximate quantity, in terms of minutes of use, of each traffic type that each party terminates on the other party's network?

(d) What is the jurisdiction of each type of traffic identified in (2)(c)?

(e) Which of the traffic types identified in (2)(c) are initiated or routed utilizing Internet protocol?

(f) How are each of the traffic types identified in (2)(c) physically routed and terminated to the other party's network, and specifically how is Internet protocol used or involved in the routing of the traffic?

(g) For each of the traffic types identified in (2)(e), what form of intercarrier compensation, if any, is currently paid to the terminating carrier?

(h) For each of the traffic types identified in (2)(e), what form of intercarrier compensation should be paid on a going-forward basis, if any, and why?

(i) For each of the traffic types identified in (2)(e), what existing FCC or FPSC precedent supports your classification of this traffic and the payment (or nonpayment) of intercarrier compensation?

(j) For each of the traffic types identified in (2)(e), can the terminating carrier identify the specific traffic type? If so, how? If not, what information does the party sending the traffic need to provide to the party terminating the traffic to allow the party terminating the traffic to identify the specific traffic type? What reporting and auditing requirements, if any, are needed?

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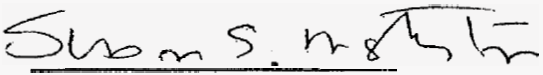
I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Electronic and U.S. mail on this 19<sup>th</sup> day of October, 2004 to the following:

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