

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

REBUTTAL TESTIMONY OF

PAUL J. CALABRO

ON BEHALF OF

**KMC TELECOM III LLC,
KMC TELECOM V, INC.,
AND
KMC DATA LLC**

MAY 10, 2005

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1 **Q. PLEASE STATE YOUR NAME FOR THE RECORD.**

2 A. My name is Paul J. Calabro.

3 **Q. WHO IS YOUR EMPLOYER AND WHAT IS YOUR BUSINESS ADDRE**
4 **SS?**

5 A. I am an independent telecommunications consultant who has been
6 engaged by KMC Telecom Holdings to provide network, technology and
7 regulatory support in connection with this proceeding. My business
8 address is 5 Gaigal Drive, Nesconset, New York 11767.

9 **Q. PLEASE DESCRIBE YOUR BACKGROUND AND THOSE**
10 **EXPERIENCES THAT QUALIFY YOU TO PROVIDE THE SUPPORT**
11 **FOR WHICH YOU WERE ENGAGED.**

12 A. I have thirty-five years of experience in the telecommunications
13 industry and have had extensive experience in virtually every aspect of
14 local exchange telecommunications operations. For the first thirty-
15 three years of my telecommunications career, I was employed by
16 Verizon Communications and its predecessor companies (Bell Atlantic,
17 NYNEX and New York Telephone Company) and I have successfully
18 directed business units responsible for regulatory and public policy
19 development, technology planning, marketing, finance, engineering,
20 service delivery and computer operations. When I retired from Verizon
21 at the beginning of 2004, I held the position of Executive Director
22 Regulatory Policy and Planning. Prior to that, as Director of Marketing

1 and Technology for NYNEX, I successfully developed the company's
2 Caller ID product. In doing so, I was responsible for assuring that the
3 company's deployment of Signaling System 7 ("SS7") was properly
4 planned and successfully implemented. Prior to my involvement with
5 SS7, I had extensive experience, including implementation of the first
6 local central office application, with Common Channel Interoffice
7 Signaling System 6 ("CCIS"), the predecessor out-of-band signaling
8 system to the now SS7 system. I also served as Director of Technical
9 Planning responsible for NYNEX's Open Network Architecture Plan,
10 and successfully established the regulatory framework that enabled
11 the company to offer enhanced services, including voice mail and
12 Internet gateway access services.

13 **Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL**
14 **BACKGROUND.**

15 A. I graduated from Fordham University in 1969 with a Bachelor of Arts
16 Degree in Political Science. As a Verizon employee I attended
17 numerous technical and managerial training programs, including
18 successfully completing several Duke University Fuqua School of
19 Business Executive Development Programs, including The Duke
20 Program for Manage Development and the Duke Competitive Strategies
21 in Telecommunications Program. I have considerable experience in all
22 aspects of local competition and competitive interconnection. As a
23 Managing Director for an Incumbent Local Exchange Carrier ("ILEC"), I

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successfully negotiated and implemented the nation's first local interconnection arrangements with Competitive Local Exchange Carriers ("CLECs") and did so approximately two years prior to the passage of the 1996 Telecommunications Act. After the 1996 Telecommunications Act was passed, I led the efforts of the then Bell Atlantic to gain interexchange relief pursuant to Section 271 of the Act, making Bell Atlantic the first Regional Bell Operating Company ("RBOC") to be granted such relief.

9 **Q. PLEASE IDENTIFY THE STATE COMMISSIONS TO WHICH YOU**
10 **HAVE SUBMITTED TESTIMONY.**

11 A. During the course of my employment with Verizon as I served as the
12 primary policy witness in all local competition proceedings in New York,
13 Massachusetts, Vermont, New Hampshire, Maine, Connecticut and
14 Rhode Island. In addition to testifying in front of each of these seven
15 state commissions, I served as the primary policy witness in connection
16 with litigation that ensued from the Federal Communications
17 Commission's ("FCC's") Special Access Investigation (CC Docket No.
18 85-166 Phase II, the SNFA remand proceeding).

19 **Q. DID YOU PROVIDE DIRECT TESTIMONY IN THIS PROCEEDING?**

20 A. No.

1 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

2 A. The purpose of my testimony is to rebut numerous inaccuracies that
3 permeated Sprint's direct case, particularly addressing inaccuracies and
4 innuendos in the testimony of William L. Wiley and James R. Burt. In
5 general, Sprint's case and the testimony of Wiley and Burt are
6 predicated on three fundamentally erroneous assumptions. First, they
7 claim that KMC knew it was engaging in interexchange carriage.
8 Second, they claim that KMC deliberately misrouted interexchange traffic
9 over local interconnection trunks. Third, they claim that KMC
10 deliberately changed the charge party number information embodied in
11 the SS7 signaling content KMC sent to Sprint so as to make the traffic at
12 issue in this proceeding look as if was local and to mask the fact that
13 KMC was, according to Sprint, knowingly sending Sprint interexchange
14 traffic. As will be shown in my testimony, Sprint is wrong on all three
15 counts and KMC acted properly in every regard.

16 **Q. CAN YOU PLEASE DESCRIBE THE FEDERAL COMMUNICATIONS**
17 **COMMISSION'S ENHANCED SERVICE PROVIDER EXEMPTION AND**
18 **EXPLAIN ITS PERTINENCE TO THIS PROCEEDING?**

19 **A.** When the FCC implemented its initial access charge regime in FCC CC
20 Dockets No. 78-72 [the MTS and WATS Market Structure proceeding],
21 and No. 80-286 [the jurisdictional separations proceeding],
22 interexchange carriers were obligated to pay access charges for their
23 use of the local exchange networks of local carriers. However, under the

1 FCC's rules, Enhanced Service Providers ("ESP") were expressly
2 exempted from the imposition of mandatory access charges and were
3 afforded end user classification. Subsequent to the FCC's adoption of
4 its initial access charge structure, the FCC has several times, beginning
5 with CC Docket No. 87-215, reconsidered whether it was appropriate to
6 continue exempting ESPs from access charges. To date, the FCC has
7 not disturbed the ESP exemption and ESPs are not required to pay
8 access charges for their use of the local exchange networks. Rather,
9 under the exemption, ESPs are afforded end user status and can
10 purchase local services, including Primary Rate ISDN services (PRIs"),
11 from the local exchange carriers of their choosing, just as all non-carrier,
12 business customers can do. For a more complete understanding of
13 enhanced services and the ESP exemption, one only need look to the
14 FCC Rules at Sec. 64.702 Furnishing of enhanced services and
15 customer-premises equipment (a) which states "For the purpose of this
16 subpart, the term enhanced service shall refer to services, offered over
17 common carrier transmission facilities used in interstate
18 communications, which employ computer processing applications that
19 act on the format, content, code, protocol or similar aspects of the
20 subscriber's transmitted information; provide the subscriber additional,
21 different, or restructured information; or involve subscriber interaction
22 with stored information. Enhanced services are not regulated under title
23 II of the Act." It bears mention that the term Enhanced Service is very

1 similar to the term Information Service which was defined in the
2 Communications Act of 1934 as amended in 1996 as the offering of "a
3 capability for generating, acquiring, storing, transforming, processing,
4 retrieving, utilizing, or making available information via
5 telecommunications." 47 U.S.C. § 153(20). The FCC referred to
6 providers of enhanced services and providers of information services as
7 ESPs, a category which the FCC noted includes Internet Service
8 Providers, which are typically referred to as ISPs, and encompasses
9 Voice Over Internet Protocol ("VoIP") offerings.

10 **Q. ARE ENHANCED SERVICES PROVIDERS REQUIRED TO PROVE**
11 **THAT THEIR OFFERINGS QUALIFY UNDER THE FCC'S EXEMPTION**
12 **BEFORE LOCAL EXCHANGE CARRIERS ARE PERMITTED TO**
13 **PROVIDE THEM WITH LOCAL SERVICES?**

14 A. No, they are not. There are no requirements in Florida or at the federal
15 level — or for that matter in any other state — that obligates
16 telecommunications carriers to affirm that their customers qualify for the
17 ESP exemption prior to providing them with local services under local
18 tariffs. Under existing practice, the onus is merely on enhanced service
19 provider customers to self-certify and not to use common carrier services
20 for any unlawful purpose. It has never been the role of common carriers
21 to investigate individual customers. Once Customer X represented itself
22 as an ESP, KMC had no reason to question the legitimacy of that
23 representation. KMC behaved in every regard as do all other local

1 exchange carriers throughout the industry. There can be no legitimate
2 question as to whether KMC had any obligation to police Customer X's
3 use of the local services KMC provided. **KMC had no such obligation.**
4 KMC behaved as is normal for local carriers and provided service
5 without investigating or validating its customer's credentials as an ESP.
6 ESP's operate by purchasing local common carrier services from
7 carriers, such as KMC, and then combine those local services with other
8 processes and applications, such as storage and retrieval functions,
9 computer processing, protocol processing and Internet functions, to offer
10 enhances services to their customers.

11 **Q. HAS SPRINT DEMONSTRATED THAT THE CALLS IN QUESTION IN**
12 **THIS PROCEEDING WERE PROPERLY SUBJECT TO ACCESS**
13 **CHARGES OR THAT KMC ALTERED THE CHARGE PARTY**
14 **NUMBER INFORMATION AS SPRINT CLAIMED?**

15 A. No. Sprint has done neither, utterly failing in its testimony to
16 demonstrate that the calls were subject to access charges or that KMC
17 altered the Charge Party Number information. While Burt at page 20,
18 lines 15 and 16 is correct when he concedes that the nature of the traffic
19 determines whether it is subject to access charges, the inescapable fact
20 is that the traffic that originated from Customer X over its PRIs in
21 Tallahassee and Fort Myers that was destined to Sprint's customers in
22 those two areas respectively was and could only be local traffic. Access
23 charges would have been due to Sprint if interexchange or toll calls were

1 passed to Sprint by KMC, although in that case, the interexchange or toll
2 carrier would owe the access charges. Here, though, KMC only passed
3 local calls to Sprint, and did so without changing any signaling
4 information. Sprint's case is a lot of wishful thinking on its part, and
5 devoid of critical facts. Without conceding that KMC would be the
6 responsible party, Burt is correct in positing that Sprint's tariffed access
7 charges would be due for interexchange traffic KMC delivered to Sprint;
8 however, he, and his fellow Sprint witnesses, have utterly failed to
9 support this claim that the traffic in question in this proceeding was
10 anything but local traffic. Local calls originated from Customer X, an
11 ESP, over its local PRIs do not become toll or interexchange calls simply
12 because Sprint wishes them to do so. Based on my reading of Sprint's
13 direct case, Sprint has failed to undertake a wider investigation into the
14 nature of the traffic, choosing to rely upon speculation and assumption.
15 Burt, while he waxes poetic about the VOIP involved in the *AT&T*
16 *Declaratory Ruling* at pages 9 and 10, of his Direct Testimony, fails to
17 offer any evidence or even testimony as to how the calls in question *in*
18 *this proceeding* were of the sort addressed in by the FCC in the ruling he
19 cites. The simple fact is that neither Sprint nor KMC could reach that
20 conclusion. Burt at page 17 admits that Sprint lacks the ability to
21 discern the nature of the traffic at issue in this proceeding and is not able
22 to distinguish enhanced service traffic from other traffic. Yet Sprint
23 would have this Commission, without any evidence at all, reach a

1 determination that the local calls originated from Customer X, an end-
2 user, business customer who has never sought certification from or
3 registered with this Commission to operate as an interexchange carrier,
4 somehow are interexchange in nature and subject to access charges.

5 **Q. IF THE CALLS WERE INTEREXCHANGE IN NATURE, WOULD KMC**
6 **BE THE PARTY THAT SHOULD PAY ACCESS CHARGES?**

7 A. If access charges were due to Sprint, for this traffic – something that has
8 been assumed, not proven, by Sprint – they would have been owed by
9 an interexchange carrier/s (“IXC/IXCs”) who was/were provisioning
10 interexchange services. But the inescapable fact is that the evidence in
11 this proceeding is wholly consistent with the conclusion that the calls
12 were generated by an ESP and were enhanced services, consistent with
13 the representations made by Customers X. Thus, the calls should be
14 treated jurisdictionally as local in nature for purposes of intercarrier
15 compensation between KMC and Sprint, unless and until Sprint
16 demonstrates otherwise.

17 **Q. WHAT DO THE FACTS IN EVIDENCE IN THIS PROCEEDING**
18 **DEMONSTRATE REGARDING KMC’S ACTIONS?**

19 A. The facts, notwithstanding that a question may have arisen regarding the
20 nature of the calls based upon a comparison of Calling Party Number
21 and Called Party Number, do not require or lead *a priori* to a conclusion
22 that such traffic was subject to access charges or, that KMC knowingly

1 misrouted traffic, or that KMC violated either the Interconnection
2 Agreement or a relevant tariff. Indeed, based upon Customer X's
3 representation of its being an ESP and the fact that the SS7 information
4 in question was not altered and was not in any way inconsistent with the
5 traffic being enhanced, the facts show that KMC acted consistently with
6 industry practices in providing its customer with local service and routing
7 its customer's local calls as local traffic. While Burt at page 18, lines 16
8 to 21, claims that the traffic in this case is IP-in-the-middle traffic, as was
9 considered by the FCC in the *AT&T Declaratory Ruling* decision, he
10 never offers any evidence to support his bald assertion. He proffers just
11 his conclusion that it was this type of traffic. Sprint's allegations that
12 KMC knowingly altered the SS7 signalling information or misrouted the
13 traffic are equally baseless. KMC did not alter the signaling content as
14 Sprint asserted it did and nothing in the Agilent Study can be relied upon
15 to reach that conclusion. KMC routed all of Customer X's local calls
16 exactly as these local calls should have been routed. KMC acted in full
17 accord with the Interconnection Agreement, Sprint's tariffs, Florida State
18 law and normal industry practices.

19 **Q. WHAT DOES SPRINT SUGGEST KMC SHOULD HAVE DONE**
20 **DIFFERENTLY?**

21 A. If Sprint is to be believed, KMC should have been looking at the SS7
22 Calling Party Number and Charge Party Number data in real time,
23 should be imputed to have done so, and should therefore be found to

1 have knowingly sent interexchange traffic over local trunks. This is
2 nonsensical. Such action would not be in keeping with standard and
3 traditional industry practices. Sprint does not even hint, let alone say,
4 that it, itself does this, – indeed, the evidence in this case is that Sprint
5 accepted and terminated or transited the traffic in question for over a
6 year before it looked at such data. Nor does Sprint point to any statute
7 or any Florida Public Service Commission order that requires any local
8 exchange carrier to take such steps. Sprint offers no basis for
9 concluding that KMC (or Sprint) should have been looking on a real time,
10 operational basis, at the SS7 data in the way that the Sprint Agilent
11 system ultimately did. Even then, Sprint did so only when it sensed the
12 opportunity to press its regulatorily unwarranted agenda that all IP-
13 telephony is subject to access charges. KMC followed normal,
14 customary and accepted operational processes in connection with its
15 provisioning and billing of service for Customer X. While Sprint would
16 like the Commission to believe that KMC should have used the SS7 data
17 for billing and seemingly for somehow determining the nature of
18 Customer X's calls, the fact is that Customer X represented itself to be
19 an ESP, therefore Customer X had to be treated by law and regulatory
20 rule as an end user. KMC used Automatic Message Accounting (“AMA”)
21 records, not SS7 records, for billing (which is the norm and not an
22 exception in the industry) and KMC routed Customer X's calls as it did all
23 end user customers' local calls.

1 Q. WAS THERE ANY REASON FOR KMC TO LOOK AT THE
2 SIGNALING SYSTEM 7 DATA TO DETERMINE IF THERE WAS A
3 RELATIONSHIP BETWEEN CHARGE PARTY NUMBER AND
4 CALLING PARTY NUMBER?

5 A. No, there was no reason to do so. Furthermore, it is not germane if
6 there was a relationship between the Calling Party Number and Charge
7 Party Number. KMC had no reason to look at Calling Party Numbers
8 which were passed over the out-of-band SS7 network. KMC act
9 properly in populating the Charge Party Number field with its customer's
10 Billing Telephone Number in connection with calls originated by
11 Customer X over the PRIs KMC provided. KMC did this by making
12 certain that the Billing Telephone Number it assigned to its customer
13 was used to populate the Charge Party Number field in the SS7
14 messages it sent within its network and to Sprint and other carriers. Mr.
15 Wiley at page 11, lines 8 to 12, is correct in one regard. He claims that
16 "[t]he charge number is a provisionable field that denotes the billing
17 number of the trunk group it supports. This field is assigned by the
18 carrier at the originating switch. This type of provisioning is usually
19 confined to User-Network trunk groups. That is, trunk groups that
20 interconnect the carriers switch to a user's PBX or customer premise[s]
21 equipment." KMC provisioned the Charge Party Number field. KMC
22 populated it with the Billing Telephone Number of Customer X. The
23 Primary Rate ISDN lines KMC provided to Customer X were User-

1 Network trunk groups, and they connected Customer X's Customer
2 Premises Equipment to KMC's local network. This is all to be expected
3 and was proper in every respect.

4 **Q. WHAT DOES THE USE OF THE BILLING TELEPHONE NUMBER IN**
5 **THE CHARGE PARTY NUMBER FIELD DEMONSTRATE?**

6 A. Through Exhibit WLW-2 (the "Agilent Study") at page 3, Sprint claims
7 that that the inserted charge number (the use of the Billing Telephone
8 Number in the Charge Party Number field in the SS7 data) changed the
9 jurisdictional nature of the calls. **This claim is simply wrong.** KMC
10 processed local calls originated from its customer's PRIs (PRIs are local
11 lines), and nothing KMC did altered what KMC knew to be and billed as
12 local calls. The nature of the calls at issue in this case was local and the
13 use of the local Charge Party Number was totally consistent with such
14 local use. Sprint would like the Commission to believe that local calls
15 made over local lines by an end user (calls to Sprint's end users within
16 local Fort Myers and Tallahassee calling areas, placed over local PRIs
17 by an end user, and ESPs are end users) are, as if by magic, toll or
18 interexchange calls. KMC's use of the Billing Telephone Number in the
19 Charge Party Number field in connection with the calls in question in this
20 proceeding demonstrates conclusively that KMC processed what it had
21 every reason to believe to be Customer X's local calls just as it would
22 have processed local calls from any of its end user customers. And this
23 type of call processing is totally consistent with industry practice and in

1 no way altered, changed or masked the jurisdiction of the calls in
2 question. In fact, it would have been improper for KMC to have acted
3 differently. There was no legal, regulatory or business basis for KMC to
4 have treated Customer X as if it were an IXC and not and ESP. It would
5 have been wrong for KMC to manipulate Customer X's local calls to
6 make them appear as if they were interexchange in nature just so Sprint
7 could levy access charges that were not due to Sprint.

8 **Q. WHEN DID SPRINT FIRST HAVE AVAILABLE THE DATA FROM**
9 **WHICH IT BASES ITS CLAIMS IN THIS PROCEEDING AND IS THE**
10 **CONCLUSION SPRINT DRAWS FROM THAT DATA DISPOSITIVE IN**
11 **ANY WAY?**

12 A. Sprint acknowledges that it had all the information it needed at every
13 point in time to reach the incorrect conclusion that it presses here – that
14 these calls were interexchange calls. This is shown be a careful reading
15 of the Burt and Wiley direct testimonies and in developing an
16 understanding of Sprint's Agilent Study. What a careful understanding of
17 these two testimonies shows is that Sprint, exactly like KMC, had no
18 reason to look at the Calling Party Number and Charge Party Number in
19 the SS7 data in connection with its billing or call processing. It was only
20 Sprint's chasing access charge ghosts through its use of the Agilent
21 Study that prompted it to look at this data. Quite simply, local carriers
22 like Sprint and KMC have no reason to look at such data for billing or call
23 routing purposes. But more importantly, while Sprint may have all along

1 had all the information it needed at every point in time to reach the
2 incorrect conclusion that it did; namely, that the calls in question in this
3 were interexchange calls; this conclusion was wrong as a matter of fact
4 and a matter of relevant law. If Customer X were an IXC, its use of the
5 local network would have been subject to access charges. Since
6 Customer X was not an IXC but was an ESP (whom KMC was required
7 by law to afford end user status), Customer X's use of the local network
8 was local in nature. Even though local carriers like Sprint and KMC
9 had no reason to look at such information as may have been available in
10 the SS7 data, this too is not germane. End users pay local charges for
11 use of the local network.

12 **Q. IS THERE ANY VALIDITY TO SPRINT'S CLAIM THAT KMC HAD TO**
13 **KNOW THE CALLS WERE INTEREXCHANGE BECAUSE IT WAS**
14 **INEFFICIENT FOR KMC'S CARRIER CUSTOMER TO ROUTE LARGE**
15 **VOLUMES OF TRAFFIC THROUGH KMC'S NETWORK TO REACH**
16 **SPRINT'S CUSTOMERS?**

17 A. There is no validity to this claim whatsoever. Sprint is wrong when Burt,
18 at page 14, lines 10 to 12, claims, as he does, that a KMC carrier
19 customer was involved in these calls. Customer X generated these
20 calls, and Customer X was not a carrier. The Commission knows this
21 full well since Customer X never even sought certification from or
22 registered with the Commission as an interexchange carrier. As to
23 whether or not it may have been more efficient for Customer X to

1 purchase its services from Sprint rather than KMC, the only conclusion I
2 can draw from that assertion is that Sprint desires that *all* customers
3 should use or return to Sprint, and a legally sanctioned monopoly should
4 be reestablished. The issue of claimed efficiency is a red herring. KMC
5 had no obligation to suggest that Customer X should purchase its
6 service from Sprint rather than KMC. If KMC was aware of a more
7 efficient option that KMC had available to offer Customer X, KMC may
8 have, as a matter of good business practice, made certain its customer
9 became aware of such option. But KMC had no interest in, nor reason
10 to even consider whether or not its customer might have been better
11 served by acquiring some services from Sprint. That is hardly the way a
12 competitive market works. Moreover, KMC believes its services
13 compare favorably from a price, efficiency and operational basis to any
14 and all of Sprint's services. The facts that are known are clear and
15 unambiguous. Customer X was not a carrier. The preponderance of
16 traffic on Customer X's PRIs was local and not intrastate toll,
17 notwithstanding Wiley's errant claims at page 12, lines 3 to 10 of his
18 Direct Testimony. Finally, the fact that many customers, including PRI
19 service customers, choose KMC as their service provider gives the lie to
20 Sprint's hollow claim that it would have been more efficient for Customer
21 X to connect directly to Sprint.

22 **Q. WHAT ACTIONS WOULD KMC HAVE TAKEN IN CONNECTION WITH**
23 **ITS PROVISION OF SERVICE TO CUSTOMER X SO AS TO**

1 **CONFORM WITH STANDARD AND TRADITIONAL INDUSTRY**
2 **PRACTICES?**

3 A. In order to conform to standard and traditional industry practices, KMC
4 would have programmed its switches to populate the Billing Telephone
5 Number in the Charge Party Number field as is the norm for local carriers
6 in connection with local services provided to end users. KMC did just
7 that. Notwithstanding Burt's errant claims at page 14, lines 15 to 18, that
8 KMC programmed its switch to insert a local PRI number rather than
9 retain the original Calling Party Number to mask the alleged
10 interexchange nature of the traffic, KMC programmed its switch the way
11 KMC did — using the Billing Telephone Number as the Charge Party
12 Number because KMC sold local service to Customer X, an end user —
13 consistent with the norm for such services. While KMC could have
14 populated the Charge Party Number with some other information (such as
15 the Calling Party Number) and not impacted KMC's local billing which
16 used AMA records, KMC had no reason to do so. Furthermore, it would
17 have been quite inconsistent with normal practice within the industry for
18 KMC to have done so. No one could ever demonstrate that KMC altered,
19 replaced, or otherwise manipulated the signaling data, because KMC did
20 not do so. Burt at pages 14 and 15 simply misuses and misinterprets the
21 Lucent technical reference he cites in support of his flawed claims.

22 **Q. WHAT LUCENT TECHNICAL REFERENCE ARE YOU REFERREING**
23 **TO AND HOW DID MR. BURT MISUSE IT?**

1 A. Two Lucent references that have been discussed in this proceeding. One
2 is Lucent's 235-080-100, which is the Translation Guide for the 5ESS
3 switch and has been cited by KMC witness, Tim Pasonski. The other is
4 Lucent's 235-190-104, which is the ISDN Feature Description for the 5E
5 13 and later generic and was cited by Sprint's witness Burt. Neither of
6 these referenced Lucent documents constitute an industry standard for
7 SS7 Charged Party Numbers from which a carrier such as KMC can
8 deviate, rather they provide those carriers who use Lucent's 5ESS
9 switches with information that is useful to them. Although they do not
10 constitute *per se* standards, the documents do reflect "normal" or
11 "optional" industry practices, each in a different context. For example, the
12 publication cited by KMC Witness Pasonski and attached Exhibit _____
13 (PJC-1), shows that it is normal for carriers to populate the Charge Party
14 Number with the appropriate information they need for recording and
15 billing purposes (see section 7.9 which states that the default (normal)
16 option is to use the Billing DN (directory number) assigned to the trunk
17 group (PRI service group) in the AMA record). In the case in point, KMC
18 populated the Charge Party Number with Customer X's Billing Telephone
19 Number for Fort Myers and Tallahassee, respectively. KMC delivered the
20 Charge Party Number to Sprint unaltered, notwithstanding Sprint's claim
21 that KMC changed the content of the Charge Party Numbers. Sprint
22 witness Burt referenced a Lucent document that provides for individual
23 Calling Party Number billing, an optional feature that would have allowed

1 KMC to populate the Charge Party Number with whatever Calling Party
2 Number happened to appear in the Calling Party Number field when
3 Customer X generated its calls. The Billing Telephone Number was both
4 properly used by KMC to populate the Charge Party Number field in the
5 SS7 records forwarded to Sprint, and any other downstream carriers, and
6 also relied upon by KMC to generate AMA billing records which would be
7 used by KMC to bill Customer X in the event that monthly PRI usage
8 exceeded that covered by KMC's flat monthly charge. KMC's population
9 of the Charge Party Number with Customer X's Billing Telephone Number
10 was appropriate in all regards, taking into account the material referenced
11 by both witnesses Pasonski and Burt in their testimonies. KMC witness
12 Pasonski cited a Lucent reference that is focused on the provision of end
13 user services, such as the PRIs KMC provided to Customer X. Since
14 KMC knew Customer X to be an end user and not a carrier, and since
15 KMC understood its PRIs to be the originating end of the calls between
16 Customer X and Sprint's end users, KMC used the Billing Telephone
17 Number for its billing purposes and properly passed that same Billing
18 Telephone Number to Sprint in the Charge Party Number field in the SS7
19 messages KMC gave Sprint. Had Sprint had a need to bill Customer X
20 for call termination (neither KMC nor Sprint understood there to be such a
21 need when the PRIs were established and to this day, KMC does not
22 know if such a need existed), KMC would have provided Sprint with the
23 Billing Name and Address ("BNA") associated with the Billing Telephone

1 Numbers passed to Sprint. On the other hand, Sprint witness Burt cited a
2 Lucent document describing various features of the Lucent 5ESS switch.
3 In doing so, he pointed out that Lucent provides an optional feature that
4 allows for a carrier to override the normal use of the Billing Telephone
5 Number in the Charge Party Number field and instead populate the
6 Charge Party Number field with the Calling Party Number. Burt would
7 have the Commission believe that this type of operation was the generic
8 norm for PRIs provided to end users, and that KMC should have used this
9 rather than the approach it took. Had KMC done so, Sprint would have
10 received the Calling Party Number in the Charge Party Number
11 field. Notwithstanding Sprint's after-the-fact assertions, KMC had no
12 reason to believe that using this highly unusual option was either
13 appropriate or warranted, and KMC programmed its switch to function
14 properly for the provision of PRIs to an end user customer.

15
16 It would have been inappropriate for KMC to have altered, replaced or
17 otherwise manipulated the signaling data associated with the calls in
18 question in this proceeding. Doing what Sprint would have wanted KMC
19 to do would have made local calls look like as if they were interexchange
20 calls, which they were not. Sprint may have preferred for KMC to have
21 treated Customer X as if it were an IXC, but KMC would have been
22 wrong to treat Customer X as anything but the end user it was. Sprint
23 would have preferred that KMC had provisioned the PRIs for Customer X

1 so as to not use the Billing Telephone Number in the Charge Party
2 Number field in the SS7 data, and for KMC to have misrouted Customer
3 X's local calls so as to make Customer X appears as if it was an IXC and
4 as if Customer X's calls were interexchange in nature. KMC would have
5 been wrong had it done so. Sprint would like the Commission too
6 believe that it would have been okay for KMC to misrepresent local calls
7 as if they were interexchange calls just so that Sprint could bill access
8 charges for these calls, but it would have been wrong had KMC done so.
9 Sprint would have preferred that KMC was a party to its scheme to bill
10 access charges for local call termination, but to assert this would be and
11 is wrong, is not supported by any real evidence, and would have been
12 inconsistent with standard and, what I believe to be, ubiquitous industry
13 practices and procedures.

14 **Q. IN THE AGILENT STUDY, SEVERAL CALL FLOW DIAGRAMS ARE**
15 **PROVIDED WHICH SPRINT WITNESS BURT ENDORSES. DOES**
16 **SPRINT'S DEPICTION OF THE CALL FLOWS REFLECT THE**
17 **RELEVANT CALLS IN THIS PROCEEDING?**

18 A. No, Sprint's call flow scenarios are incorrect. Burt at page 16, lines 13 to
19 16, claims that KMC was a knowing participant in some IXC scheme to
20 avoid access charges, but offers no evidence to support it. He cites the
21 Agilent Study, which does not even acknowledge the possible presence
22 of an ESP, such as Customer X. The study uses two call diagrams,
23 which Sprint apparently endorses, neither of which depicts the actual

1 traffic flow, but instead places KMC in privity with IXCs, the category of
2 telecommunications provider against whom access charges should be
3 assessed in the first place in connection with interexchange calls. The
4 call flow diagram in Wiley's Exhibit WLW-2 at page 10 is telling since it
5 shows clearly that Sprint is wrong in its assumption that KMC had direct
6 connections with one or more IXCs in connection with the calls at issue
7 in this proceeding. This was not the case. The only direct connections
8 involved with regards to the calls in this proceeding were the PRIs KMC
9 provided to Customer X. The direct connections were between KMC's
10 network and its end user customer. The call flows described by KMC in
11 connection with responses to Staff Interrogatories 15 and 16 in KMC's
12 Response to Staff's First Set of Interrogatories to KMC are accurate
13 representation of the calls in issue.

14 As made clear in KMC Response to Staff Interrogatory No. 15, the
15 calling path shown by Wiley in Exhibit No. 2 on page 1 is incorrect. That
16 diagram shows a call from a hypothetical or alleged local exchange
17 customer of Sprint being handed by Sprint to an IXC and then by the IXC
18 directly to KMC. In turn, that diagram shows KMC handing the call to
19 Sprint to complete it to a Sprint local exchange customer. Apart from
20 Sprint's assertions and its reliance on its Agilent Study, KMC has no
21 first-hand knowledge of any aspect of any call from the hypothetical or
22 alleged Sprint end user originating the call to the handoff by Sprint to an
23 IXC. As KMC's Response makes clear, KMC did not receive this call, or

1 any other call in question in this proceeding, from the IXC Sprint
2 identified, or from any other IXC. Had Wiley been accurate in his call
3 path depiction, it would have shown a local call being originated by
4 Customer X on a local PRI provided by KMC to Customer X and that call
5 being handed to Sprint for completion to the local Sprint telephone
6 number. A proper diagram, as was provided by KMC in its Response to
7 Interrogatory No. 16, would have made clear that the billing telephone
8 number associated with Customer X's PRIs was handed unaltered to
9 Sprint as the Charge Party Number. As the Response to Interrogatory
10 No. 16 demonstrates, several critical elements exist in connection with
11 the calls at issue in this proceeding. First, Customer X uses its ISDN
12 capable CPE to originate a local call destined for a Sprint local customer.
13 Second, the relevant local calls use the local PRIs provided to Customer
14 X by KMC. Third, KMC used the Billing Telephone Number in its local
15 switch for AMA recording purposes and populated the SS7 Charge Party
16 Number with the same Billing Telephone Number. Fourth, KMC sent
17 Sprint the local calls over the local interconnection trunks between KMC
18 and Sprint's local switches. The SS7 signaling was sent to Sprint by
19 KMC over the out-of-band SS7 network. Fifth, Sprint received the local
20 calls for each of its end users and processed the calls as appropriate.
21 The Charge Party Numbers Sprint received were the Billing Telephone
22 Numbers of KMC's Customer X. Sixth, Sprint sent the local calls to its
23 end users over local services, such as a residence lines, business lines,

1 Centrex lines, Basic Rate ISDN lines or PRIs, PBX trunks and so forth.
2 Seventh, Sprint's end users used their CPE to answer the incoming
3 calls. The actual call flows that took place rebut the call flow framework
4 Sprint asserted took place and which underlie Sprint's errant claims.
5 As shown, KMC had no direct connections with Interexchange Carriers,
6 or anyone but Customer X in connection with the calls at issue in this
7 proceeding. KMC knew its customer to be an end user, and KMC sold
8 its customer local service in the form of PRIs. KMC routed Customer X's
9 local calls as they should have been routed. KMC sent all of the
10 signaling, including the Charge Party Number, to Sprint as was proper
11 for local calls.

12 **Q. CAN YOU COMMENT ON WHAT THE SPRINT AGILENT STUDY**
13 **DOES DEMONSTRATE?**

14 A. As Sprint acknowledges, the Agilent Study cannot be used to determine
15 where Charge Party Number manipulation, if any, took place. See Wiley
16 Exhibit (WLW-2) at page 10 (emphasis added), which notes that "*[w]hat*
17 *we don't know is whether the call information was altered prior to arriving*
18 *at KMC Telecom.*" The alleged altering did not occur, and KMC knows
19 this as a fact. KMC populated the Charge Party Number with the Billing
20 Telephone Number KMC assigned to its customer's (Customer X's)
21 PRIs. The Agilent Study demonstrates that Sprint received the Charge
22 Party Numbers that KMC sent them. The Agilent Study actually reveals
23 that Sprint has not proven its case – and cannot prove its case. The

1 Agilent Study shows that what Sprint received from KMC were local calls
2 generated by Customer X's use of the PRIs it purchased from KMC. All
3 of the local calls were delivered to Sprint as local calls should have been
4 delivered. To the extent that the Agilent Study indicates that other things
5 may have occurred with this traffic that Sprint or KMC just did not know
6 about, and that might have occurred prior to Customer X generating its
7 local calls over the PRIs KMC provided to it, such actions do not appear
8 inconsistent with Customer X being an ESP. As noted previously, ESPs
9 combine their enhanced functions and features with the local services
10 provided by local carriers. That combining is precisely what makes
11 enhanced services what they are; it does not make a local service an
12 interexchange one.

13 **Q. WHAT DOES KMC KNOW ABOUT CUSTOMER X AND THE CALLS**
14 **IN QUESTION IN THIS PROCEEDING?**

15 A. My understanding is that, to the best of KMC's knowledge, the local calls
16 KMC sent to Sprint were originated by Customer X over the PRIs KMC
17 provided. KMC had no specific knowledge of the enhanced service
18 operations of Customer X other than it supported VOIP functionality and
19 had no knowledge of whatever interactions, if any, Customer X may
20 have had with its enhanced service customers, or other parties, including
21 carriers.

22

1 **Q. CAN YOU SUMMARIZE YOUR TESTIMONY?**

2 A. Yes. For two decades, the FCC has exempted ESPs who use the local
3 network from paying access charges. The FCC did this by affording
4 ESPs end user status. End users pay local charges for their use of the
5 local exchange networks provided by carriers like KMC and Sprint.
6 Customer X was not a carrier and therefore was not subject to access
7 charges for its use of the local network. While Sprint would like the
8 Commission to believe that Customer X's enhanced services operations
9 somehow made its local calls interexchange in nature and therefore
10 should have been subject to access charges, such action would be
11 inconsistent with two decades of regulatory and legal precedents.
12 Customer X was an ESP entitled to purchase PRIs as an end user from
13 KMC. KMC provided Customer X with PRIs in precisely the same
14 fashion as it did for many other end users. Customer X's calls destined
15 for Sprint's customers in Fort Myers and Tallahassee were processed
16 like the local calls they were. KMC assigned local Billing Telephone
17 Numbers to Customer X's PRIs for use in KMC's billing operations.
18 KMC populated these local Billing Telephone Numbers in the Charge
19 Party Number field in the SS7 out-of-band signaling messages it sent to
20 Sprint in connection with the voice band calls from Customer X to
21 Sprint's customers. All of this is fully consistent with long standing
22 industry practices and nothing Sprint has said or testified to can alter the
23 facts here which show that: 1) KMC did not knowingly process toll or

1 interexchange calls as if they were local calls; 2) KMC did not misroute
2 its customer's local calls; 3) KMC did not alter the signaling associated
3 with its customer's local calls; 4) KMC did not act in any way to mask or
4 misrepresent toll or interexchange calls as local calls; 5) KMC did not act
5 to bypass legitimately due access charges; 6) KMC had no reason to
6 believe Customer X was an IXC and nothing Sprint has shown requires
7 such belief; and 7) Sprint has not demonstrated that Customer X was
8 engaged in interexchange carriage activities that would somehow
9 obviate its ESP exemption.

10

11 Ironically, Sprint's assertions and the investigation it generated now
12 gives rise to concerns that Sprint's own IXC affiliate, or even Sprint itself,
13 is or may be engaging in much the same activity of which it accused
14 KMC of conducting. While KMC's conscience is clear that its actions
15 were proper in every respect, for an IXC to knowingly mask
16 interexchange calls as if they were local calls, is at the heart of the type
17 of bypass the Florida statute seeks to prevent.

18 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

19 **A.** Yes, it does.

7.9 CPN BILLING

Description: Is Calling Party Number allowed to be used as billing number? The CPN BILLING field was added to support the CPN (Calling Party Number) Billing on PRI special feature. This field indicates whether the CPN (Calling Party Number) provided from the far office in the SETUP message over a PRI should be used as the billing number in the AMA record. The default option is to use the BILLING DN assigned to the trunk group in the AMA record. The CPN must pass screening before it is used in the AMA record.

Software Release: 5E9(1) and later.

Required Field.

Default: N

Valid Entries: Y, N

Data Rules:

"N" must be entered if TRKCLASS is not "EDSL" or "EDSLHM".

WARNING: If CPN BILLING is "Y" and CPN SCRN is "N", screening of the Calling Party Number is not be performed.