

**SCANNED**

LAW OFFICES  
**Messer, Caparello & Self**  
A Professional Association

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July 29, 2005

**BY HAND DELIVERY**

Ms. Blanca Bayó, Director  
Commission Clerk and Administrative Services  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No. 041144-TP

Dear Ms. Bayó:


Enclosed for filing on behalf of KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC ("KMC") are an original and fifteen copies of the following documents:

1. KMC's non-confidential Responses to Sprint's First Set of Interrogatories, Nos. 10, 14 and part of 15 (bates numbers 000303 through 322). KMC is withdrawing the confidential claim for these documents filed on March 28, 2005.
2. KMC's non-confidential Response to Sprint's Third Set of Interrogatories, No. 40. KMC is withdrawing the confidential claim for this document filed on March 30, 2005.
3. KMC's non-confidential Response to Staff's First Request for Production of Documents, Item No. 5. KMC is withdrawing the confidential claim for this document filed on May 4, 2005

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

  
for Floyd R. Self

FRS/amb  
Enclosures  
cc: Parties of Record

DOCUMENT NUMBER-DATE

07323 JUL 29 05

DOWNTOWN OFFICE, 215 South Monroe Street, Suite 701 • Tallahassee, FL 32301 • Phone (850) 222-0720 • Fax (850) 224-4359  
NORTHEAST OFFICE, 3116 Capital Circle, NE, Suite 5 • Tallahassee, FL 32308 • Phone (850) 668-5246 • Fax (850) 668-5013

FPSC COMMISSION CLERK

**DOCKET NO. 041144-TP**

**CONFIDENTIAL:**

**KMC Confidential Attachment, Supplemental Response, Interrogatory No. 10**

KMC terminated services to UniPoint Holdings, Inc., wherever provided by KMC, on or about May 3, 2004. This termination of services to UniPoint would have impacted the traffic being delivered to Sprint. Whether this was "a dramatic change in pattern and volume of traffic KMC delivered to Sprint for termination beginning on May 22, 2004," is unknown to KMC. However, KMC is unaware of any other changes in service that would have impacted traffic volumes in the May 2004 time period.

**KMC Confidential Attachment, Supplemental Response, Interrogatory No. 14**

KMC first began service to UniPoint Holdings, Inc. on or about July 23, 2002. Over time, the only Sprint-Florida markets in which KMC provided services to UniPoint were the Ft. Myers, Florida, and Tallahassee, Florida, market areas. The service order agreements that KMC has been able to identify pertaining to services provided in Florida in the Sprint-Florida service areas are identified and provided in response to Confidential Attachment, Supplemental Response, Interrogatory No. 15.

After KMC received Sprint's demand for access charges for certain traffic exchanged over local interconnection trunks, by letter dated April 21, 2004, KMC notified UniPoint of Sprint's claim, put UniPoint on notice of its potential switched access liability, and addressed several other operational and business relationship matters. UniPoint responded to KMC by a letter dated May 3, 2004. KMC further responded to UniPoint by letter dated June 11, 2004. Copies of these letters are identified and provided in response to Confidential Attachment, Supplemental Response, Interrogatory No. 15.

As is reflected in this correspondence, services to UniPoint were migrated from KMC's network on or about May 3, 2004. Notwithstanding the various requests stated in KMC's April 21, 2004, and June 11, 2004, letters to UniPoint, UniPoint has not provided the information requested in those letters nor did UniPoint ever execute the requested Master Service Agreement.

KMC is not currently providing services to UniPoint, and has not provided any services to UniPoint since on or about May 3, 2004.



305 Church Street, South West  
7th Floor, Suite 715  
Huntsville, Alabama 35801  
Tel 256.705.1030  
Fax 256.705.1099  
www.kmctelecom.com

April 21, 2004

**VIA FACSIMILE AND OVERNIGHT MAIL**

Mr. Michael Holloway, President  
Mr. David Flanary, Executive Vice President  
Mr. Clay Johnson, CFO  
UniPoint Holdings  
6500 River Place Blvd, Bldg 2 Suite 200  
Austin, Texas 78730  
Facsimile: (512) 735-1242

UniPoint Services, Inc.  
Attn: Contract Administration  
6500 River Place Blvd, Bldg 2 Suite 200  
Austin, Texas 78730  
Facsimile: (512) 735-1220

**NOTICE OF POTENTIAL SWITCHED ACCESS LIABILITY**

Dear Mr. Holloway, Flanary and Johnson:

As you know, KMC is currently providing service to UniPoint Holdings, Inc. ("UniPoint") pursuant to multiple Service Agreements, KMC's Interstate and International Service Terms and Conditions ("Federal Tariffs") and applicable state tariffs ("Intrastate Tariffs").

This letter is to provide notice to Unipoint concerning a claim by Sprint Communications for switched access charges on UniPoint's traffic in the state of Florida. While KMC intends to oppose vigorously this claim, in the event KMC is unsuccessful in its opposition, KMC hereby advises you that Unipoint is responsible for any and all such charges and financial security is hereby requested to be posted by Unipoint to pay any such charges. Secondly, as outlined more fully below, KMC requires additional information from Unipoint in order to properly oppose the imposition of switched access charges. Finally, the Service Agreements contemplated a definitive Master Service Agreement to be signed by Unipoint and KMC. The terms and conditions for the MSA have been negotiated for some time and KMC now must insist that an MSA be executed and delivered prior to the close of business on April 26, 2004.

As you may be aware, there are several state Public Service Commission ("State PSC") and Federal Communications Commissions ("FCC") proceedings pending in effort to determine the appropriate regulatory treatment for voice related internet protocol traffic. Among the issues to be addressed in these proceedings is a fundamental issue with regard to the specific network and service applications that will be classified as voice over internet protocol ("VoIP") traffic and the appropriate treatment for both VoIP applications and non-VoIP internet protocol based

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is a registered trademark of KMC Telecom Holdings and its subsidiaries.

UniPoint Holdings, Inc.  
April 21, 2004  
Page Two

applications. Many incumbent local exchange carriers ("ILECs") have already made claims with regard to intrastate and interstate switched access charges that ILECs assert are owed for the origination and termination of VoIP and non-VoIP internet protocol based applications. More significantly, today the FCC has ruled that the service provided by AT&T, which may be very similar to that provided by Unipoint, is subject to switched access charges. Our counsel is studying the impact of this most recent ruling but at a minimum this is a troubling decision.

Following receipt of an invoice by KMC from Sprint for switched access charges in the amount of \$3,066,595 for the period beginning July 2002 through February 2004 KMC reviewed the corresponding call detail and billing records supporting the claimed Sprint charges to determine the originating jurisdiction of the minutes of use ("MOUs") and their originating Calling Party Number ("CPN"). KMC has performed traffic studies using sample information from the SS7 networks, trunks terminating KMC local traffic, billing records, and KMC's PRI arrangements and determined that a large percentage of the MOUs for VoIP and non-VoIP internet protocol traffic that KMC has been billed for to date by Sprint is traffic originating from and terminating to numbers assigned to UniPoint.

While KMC is vigorously disputing these charges and intends to continue to do so, consistent with the obligations set forth in KMC's tariffs, UniPoint is obligated to pay these charges associated with UniPoint's use of the Services. For example, and without limitation, we refer you to Section 5(i) of the Federal Tariff which provides in relevant part as follows:

As between KMC Telecom and Customer, Customer is responsible for all charges attributable to Customer's use of the services, including charges resulting from fraudulent or unauthorized use of services, including but not limited to KMC Calling Card Services, by any third party, local access charges, all use or requirements for utilization of a service after its delivery to Customer, and all billing, billing adjustments/credits, customer service, creditworthiness and other service-related requirements of Customer's uses.

In addition, given the amount involved, KMC requires assurances that if the Sprint charges applicable to the Services are ultimately found to be due and owing Unipoint will in fact pay such charges. Section 6(d) of the Federal Tariff provides that Unipoint is obligated, at KMC's request and in KMC's sole opinion, to "pay in advance of the furnishing or continuation of any service, and/or make such payments in cash or the equivalent of cash." Accordingly, KMC requests that, prior to the close of business on Monday, April 26, 2004, either a cash escrow account be established under the control of KMC equal to the amount Sprint has claimed for these charges ("Escrow Amount") or an irrevocable letter of credit in the Escrow Amount be posted by Unipoint in favor of KMC by an acceptable bank to be drawn upon to pay these charges.

Second, KMC requires additional information from UniPoint in order to effectively dispute and respond to an ILEC's switched access charge billing. Therefore, in effort to further

- Confidential -

 KMC Telecom

UniPoint Holdings, Inc.  
April 21, 2004  
Page Three

evaluate the merits of Sprint's claims, KMC requests, that UniPoint provide KMC with certain information to allow KMC to confirm the nature of the UniPoint traffic exchanged on KMC's network pursuant to the Agreements for the period from July 2002 through the current date. Specifically, KMC requests that UniPoint provide the following information no later than Monday, April 26, 2004:

If UniPoint characterizes any of the traffic as Voice over Internet Protocol ("VoIP") please identify the percentage of traffic UniPoint calculates represents VoIP traffic based on the following definition:

"Voice over Internet Protocol" or "VOIP" Internet Voice, also known as Voice over Internet Protocol (VoIP) is technology that allows subscribers to make telephone calls, within the United States, using a broadband Internet connection instead of a regular (or analog) phone line. VoIP is an enhanced service and utilizes TCP/IP as a means to provide two way real time voice communications over public internet backbone packet networks. VOIP as defined herein is exclusively limited to traffic which utilizes TCP/IP as a transmission protocol from the customer's originating broadband service or equipment to the terminating equipment or gateway."

2. To the extent that UniPoint does not characterize one-hundred percent of such traffic as VoIP, please provide additional information regarding the nature, percentage, and characterization of the jurisdictional nature of the remaining traffic.

Third, to the extent that UniPoint may be using the Services to originate and/or terminate VoIP traffic, KMC insists that the parties enter into a Master Service Agreement that provides for KMC's PRI services that may be utilized to provide VoIP services. KMC understands that the UniPoint has been negotiating such an arrangement with KMC for some time but that must now come to an end. Specifically, KMC requests that UniPoint work jointly with KMC in effort to ensure that a Master Service Agreement substantially in the form KMC forwarded to Unipoint on early this year is executed by both KMC and UniPoint no later than the close of business on Monday, April 26, 2004. In the event there are any Services being provided by KMC to Unipoint that are not VoIP traffic a definitive MSA needs to be executed prior to the close of business on Monday, April 26, 2004. Mikhael Vitenson, Associate General Counsel, will be furnishing another copy of acceptable MSA drafts to you either today or tomorrow.

In the interim, and effective immediately, all traffic sent by Unipoint to KMC for all Services (to originate and/or terminate VoIP internet protocol related services or non-VoIP services) be sent by Unipoint accompanied by originating line information including but not limited to a CPN.

- Confidential -

 KMC Telecom



UniPoint Holdings, Inc.  
April 21, 2004  
Page Four

While KMC greatly values its relationship with Unipoint the foregoing requests must be complied with in order to protect KMC's interests which we trust you understand. The failure of Unipoint to respond satisfactorily to this letter will leave KMC no choice than to immediately suspend all Services.

Please contact me directly to discuss any of the matters set forth above and in order to hopefully resolve these issues to KMC's satisfaction. I can be reached directly at (256) 705 - 1022 or by email at [wendell.register@kmctelecom.com](mailto:wendell.register@kmctelecom.com).

Sincerely,



Wendell E. Register  
Vice President - Network Operations

cc: Roscoe C. Young II, CEO  
William H. Stewart, CFO  
Kevin Bittner, Senior Vice President - Sales  
Marva Brown Johnson, Esq., Senior Counsel - Regulatory Affairs  
Mikhael Vitenson, Esq. Associate General Counsel  
Alan M. Epstein, Esq.



ATTACHMENT INTERROGATORY NO. 15  
CONFIDENTIAL  
KMC RESPONSE - 000307

May 3, 2004

Via Facsimile

Mr. Wendell E. Register, Vice President – Network Operations  
305 Church Street, SW  
7<sup>th</sup> Floor, Suite 715  
Huntsville, Alabama 35801  
Facsimile: 256-705-1099

Dear Wendell:

Reference is made to your letters labeled "Notice of Potential Switched Access Liability" dated April 21, 2004, and received by UniPoint Holdings, Inc. on April 23, 2004 by overnight delivery (the letters also indicated facsimile delivery, which UniPoint has no record of receiving). As you can appreciate, your letter and our subsequent telephone conversations raised issues for the first time and we have been attempting to respond to your requests as expeditiously as possible.

First and foremost, you stated that UniPoint's services "may be very similar" to the services AT&T was providing which the FCC ruled are subject to switched access. It is our position, as we have communicated to you and as we have presented several times to the FCC Commissioners and staff, UniPoint is an Enhanced Service Provider providing unregulated information and/or enhanced services to its customers. This is vastly different than AT&T's self-proclaimed regulated telecommunications service and/or the services described by AT&T's filings related to its petition.

Per your requests, UniPoint has presented KMC a plan for migrating particular types of traffic away from KMC's network. Such plan has already begun to significantly reduce the amount of traffic that KMC is receiving from UniPoint. It is UniPoint's expectation that it will be able to complete this extremely time intensive exercise, on or before May 3<sup>rd</sup>. It is our understanding that no term obligations and/or early termination charges would be applicable as a result of responding to your requests, and no existing terminating services will be billed on a going forward basis past May 3<sup>rd</sup> or discontinued use of the services, whichever date comes first.

KMC has stated that certain types of traffic from UniPoint would be acceptable to KMC, and both parties are working to create a definition that is mutually acceptable. It is expected that said definition will be part of a mutually agreed upon Master Services Agreement ("MSA"), that both parties have agreed to diligently work towards completion. Despite the efforts expended by UniPoint to finalize the previous MSA, your team indicated that we should turn our attention to the new form provided by Mr. Vitenson on April 30, 2004, which we are doing. At a minimum the MSA will include the ability for UniPoint to originate traffic (which is currently today used by end-users) via KMC's network and terminate traffic that originated from an IP broadband connection, with pricing based on local reciprocal compensation charges and not switched access charges. I reiterate such limitation on traffic



● Page 2

ATTACHMENT INTERROGATORY NO. 15  
CONFIDENTIAL  
KMC RESPONSE - 000308

May 3, 2004

KMC is willing to accept does not reflect UniPoint's interpretation of the FCC's definition of an information and/or enhanced service, or of the types of traffic, or situations in which, access charges do not apply. Continued use of origination and termination services for IP broadband access to the PSTN, will be permitted and local rates will apply while the parties complete said MSA.

You stated in your letter that KMC has received a bill from Sprint for switched access charges, due to traffic that KMC has terminated to Sprint. KMC has claimed that some portion of the traffic that Sprint is claiming access charges are due to traffic originated from UniPoint's network. As KMC is aware UniPoint is an Enhanced Service Provider, offering information and/or enhanced services to a wide variety of customers, and such traffic is to be treated as local traffic and is therefore exempt from paying access charges as defined by the FCC.

UniPoint has offered to help KMC in disputing any switched access charges due to traffic originating from UniPoint's network. But UniPoint currently has no information to validate that the traffic in question even originated from UniPoint's network. Assuming that KMC can provide the supporting information that the traffic Sprint is charging KMC switched access originated from UniPoint's network, UniPoint will assist in providing KMC with the necessary information required to dispute said switched access charges, assuming acceptable resolution to the foregoing items.

You indicated in your letter that KMC is vigorously disputing these charges and intends to continue to do so. To the extent that you desire your letters to constitute demands for \$3,066,595, UniPoint disputes these claims.

While I appreciate the language in your letters regarding valuing the relationship with UniPoint, I am surprised by the course KMC has chosen to follow. I believe we could have worked through some of these issues prior to being forced to react on a compressed timeline. Pursuant to your request, this letter is being provided in an effort to outline a basis for going forward between the two companies. It does not purport to be a complete response to all of the issues in your letter and UniPoint reserves all rights and remedies available to it.

Sincerely,

Kihm Schroeder  
Vice President, Operations

Confidential

June 11, 2004

**VIA FACSIMILE AND OVERNIGHT MAIL**

Mr. Michael Holloway, President  
Mr. David Flanary, Executive Vice President  
Mr. Clay Johnson, CFO  
UniPoint Holdings  
6500 River Place Blvd, Bldg 2 Suite 200  
Austin, Texas 78730  
Facsimile: (512) 735-1242

UniPoint Services, Inc.  
Attn: Contract Administration  
6500 River Place Blvd, Bldg 2 Suite 200  
Austin, Texas 78730  
Facsimile: (512) 735-1220

Dear Mr. Holloway, Flanary and Johnson:

We are writing in response to your letter of May 3, 2004, referencing our letter to you dated as of April 21, 2004, regarding potential switched access liability in connection with certain services provided by KMC to UniPoint Holdings, Inc. ("UniPoint").

We acknowledge that all of UniPoint's terminating traffic has been migrated from KMC's network as of May 3, 2004. Such migration resulted in rendering idle 197 PRI circuits previously ordered by UniPoint from KMC on various dates (the "PRI Circuits"). As you know, such PRI Circuits were ordered for a minimum term and are subject to termination charges per the provisions of the Service Orders and KMC's applicable Tariff. Without waiving any rights that may be available to KMC at law or in equity or under the Tariff and the Service Orders, KMC will, at this time, not bill UniPoint for termination charges associated with the terminated PRI Circuits, provided, that:

1. UniPoint complies in all respects, not later than June 18, 2004, with the requests for information made by KMC in its letter dated April 21, 2004, and from time to time thereafter;
2. UniPoint pays any and all third party switched access liability that have been, or may be, assessed in connection with UniPoint's provisioning of services to other third parties utilizing the PRI Circuits and indemnifies KMC and its affiliates from and against any and all liabilities, claims, suits, damages and losses (including attorneys'

UniPoint Holdings, Inc.  
June 11, 2004  
Page Two

fees and costs) associated with such switched access liability or the defense and/or dispute by KMC thereof.

In addition to the termination by UniPoint of the PRI Circuit, UniPoint requested, in conversations between UniPoint and KMC taking place subsequent to UniPoint's letter of May 3, that KMC terminate and/or not bill UniPoint for unutilized capacity on certain DS-3 circuits connecting UniPoint's and KMC's facilities ordered by UniPoint from KMC at various times (the "DS-3 Circuits"). Such DS-3 Circuits are, as are the PRI Circuits, subject to minimum term commitments per the Service Orders for such DS-3 Circuits. However, and subject expressly to the conditions of subparagraphs (1) and (2) above, KMC will not bill UniPoint at this time for unutilized capacity on the DS-3 Circuits and will work together with UniPoint to minimize the termination liability associated with the DS-3 Circuits and to foster exchange of acceptable traffic between our companies that would utilize such DS-3 Circuits.

Further, it has come to KMC's attention that there are instances where UniPoint, or customers of UniPoint, pass the billing telephone number ("BTN") assigned to the PRI Circuit, in lieu of the originating line information ("OLI") or calling party number ("CPN"), to carriers that are downstream of KMC's network. In discussions with UniPoint on this matter, UniPoint has been unable to provide KMC adequate assurance with regard to whether other call detail information (such as carrier identification codes ("CIC")) necessary for third party carriers to properly jurisdictionalize this traffic and to determine the appropriate party to bill and rates to apply is also being passed on traffic originated on the remaining PRI Circuits. In order to ensure that there is no appearance of impropriety regarding the routing of this traffic beyond KMC's network, please *cease this practice immediately*. Please be reminded failure to pass adequate calling party information is a violation of industry guidelines, and in some instances may also be subject to other regulatory or legal scrutiny. For avoidance of doubt, UniPoint bears responsibility for any and all third party claims associated with UniPoint's: (1) failure to deliver or delivery of inaccurate OLI and CPN information; and (2) any alteration of call detail information associated with traffic traversing the PRI Circuits once this traffic has left KMC's network. As specified in the Tariffs, to the extent that switched access liability, or other liability, may be assessed by third parties in connection with UniPoint's use of the PRI Circuits, UniPoint bears any and all such liability.

Lastly we provided to your attention on April 30, 2004, an MSA and certain attachments thereto which reflects types of traffic acceptable to KMC that may utilize some of the PRI Circuits and the DS-3 Circuits. UniPoint indicated that it intends to work diligently at arriving to a mutually acceptable agreement with KMC. However, we did not receive comments on the MSA to date. As we stated, unless UniPoint complies with the requirements set forth above, we are unable to continue providing originating PRI circuits to UniPoint and will have no choice but to terminate such circuits as of midnight, June 17, 2004, unless a fully executed agreement is in place between our companies reflecting such requirements. We are looking forward to your comments and to continued discussions.

UniPoint Holdings, Inc.  
June 11, 2004  
Page Three

Please indicate your receipt and acceptance of the terms and conditions set forth in this letter by signing below and returning a signed counterpart of this letter to my attention.

Sincerely,

Wendell E. Register  
Senior Vice President Network Operations

AGREED AND ACCEPTED:

UniPoint Holdings, Inc.

By: \_\_\_\_\_  
Name:  
Title:  
Date:

cc: Roscoe C. Young II, CEO  
William H. Stewart, CFO  
Kevin Bittner, Senior Vice President – Sales  
Marva Brown Johnson, Esq., Senior Counsel – Regulatory Affairs  
Mikhael Vitenson, Esq. Associate General Counsel  
Alan M. Epstein, Esq.

## KMC TELECOM MASTER SERVICES AGREEMENT

<b>KMC TELECOM III LLC</b> Name and Title for Notices:  Address: 1545 Route 206, Suite 300 Bedminster, NJ 07921 Fax: (908) 470-3607	<b>[CUSTOMER]</b> Name and Title for Notices  Address:
---	---

This KMC Telecom Master Services Agreement (this "Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 200\_\_ (the "Effective Date") by and between KMC Telecom \_\_\_\_\_, a Delaware limited liability company having its principle place of business at 1545 Route 206, Bedminster, NJ 07921 ("KMC"), and \_\_\_\_\_, a \_\_\_\_\_ [corporation] [limited liability company] having its principle place of business at \_\_\_\_\_ ("Customer"). KMC and Customer are referred to collectively as the "Parties," and each individually as a "Party."

This Agreement consists of the General Terms and Conditions and the Attachment(s) listed below. No Attachment shall be effective unless executed by KMC. In the event of a conflict between the terms and conditions of the General Terms and Conditions and the terms and conditions of any Attachment, the terms and conditions of the Attachment shall control. If there is an inconsistency between the terms and conditions of the Agreement and the terms and conditions of any KMC Tariff (as hereinafter defined), the terms and conditions of the Agreement shall control.

- KMC Private Line Terms and Conditions Contract # \_\_\_\_\_
- KMC Direct Internet Access Terms Contract # \_\_\_\_\_
- KMC Collocation Terms Contract # \_\_\_\_\_
- Voice Origination and Termination Services Contract # \_\_\_\_\_
- \_\_\_\_\_ Contract # \_\_\_\_\_

IN WITNESS WHEREOF, in consideration for the mutual promises set forth in the Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned have executed this KMC Master Services Agreement by their duly authorized representatives as of the date first written above.

**KMC TELECOM III LLC**  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[CUSTOMER]**  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



ATTACHMENT INTERROGATORY NO. 15  
CONFIDENTIAL  
KMC RESPONSE - 000313



## GENERAL TERMS AND CONDITIONS

**1. Provision of Services.** KMC shall, in accordance with this General Terms and Conditions, the Service Attachments and any applicable state or federal tariffs, and KMC's business guide (KMC's tariffs and business guide, collectively, "Tariff"), provide to Customer the services described in the Attachment(s) to the Agreement (the "Services"). All Services under the Agreement are provided by KMC on an as available basis.

**2. Term.** The term of the Agreement (the "Term") shall commence on the Effective Date and shall continue for so long as Services are provided by KMC to Customer under the Service Attachments.

**3. Billing and Payment.** KMC shall invoice Customer and Customer shall pay KMC in immediately available U.S. funds so that the payment is received by KMC no later than 30 days from the date of the invoice (the "Due Date").

**4. Non Payment.** Any invoice not properly disputed under Section 5 and not paid by the Due Date will be subject to a late payment assessment at the lower of 1.5% per month or the highest rate legally permissible, until paid. Further, KMC may, without notice, immediately suspend the Services or Service Order processing, if any invoice not properly disputed under Section 5 is not paid by its Due Date.

**5. Billing Dispute.** Customer shall have the affirmative obligation of providing written notice of any good faith dispute of any invoice within 30 days after receipt of the invoice by Customer (which notice shall include sufficient detail for KMC to investigate the dispute). Customer may withhold payment only on amounts disputed in good faith within 30 days after Customer's receipt of the invoice. If Customer does not provide written notice of a dispute with respect to an invoice within the 30 day-period, Customer shall be deemed to have waived its right to dispute such invoice and to have agreed to pay such invoice. If Customer has provided sufficient detail for investigation of the dispute, KMC will use reasonable efforts to resolve and communicate its resolution of the dispute within 30 days of its receipt of the dispute notice. If KMC determines that the dispute is invalid, any unpaid amounts to be paid by Customer shall be subject to the late payment assessment under Section 4.4 retroactive to the Due Date of the disputed invoice. Notwithstanding anything in the Agreement to the contrary, Customer shall not withhold any disputed amounts while its KMC account is delinquent. Claims of fraudulent usage shall not constitute a valid basis for a dispute.

**6. Deposits.** Customer shall provide KMC with security in the amount of \$ \_\_\_\_\_ in the form of either a cash deposit, or an irrevocable, stand-by letter of credit from a financial institution and in a format acceptable to KMC. Cash deposits shall bear interest at the rate for telephone security deposits set by the Public Utility/Service Commission in the state where Customer is headquartered. Customer's initial credit limit under the Agreement is \$ \_\_\_\_\_. If (i) Customer's account becomes delinquent; (ii) KMC determine that there has been a material change in Customer's business or credit worthiness; or (iii) if the

monthly charges for the Services are projected to exceed (based on KMC's measurement of Customer's daily usage run rate), or do exceed, Customer's credit limit, KMC may require additional security of its choice from Customer as a condition to continuing to provide the Services. All additional security hereunder must be provided by Customer to KMC within 5 business days from Customer's receipt of KMC's written request for such additional security. Failure to provide the additional security shall result in immediate termination of Services, and shall subject the Customer to Termination Charges.

**7. Obligations Regarding Taxes.** Customer agrees to pay to KMC any and all local exchange carrier assessed charges and any other federal, state or local domestic or international governmental and regulatory taxes (except for taxes on the net income of KMC), charges, impositions, or assessments including, but not limited to: (i) all sales, use, excise, gross receipts, privilege or other similar taxes; (ii) charges mandated or permitted by regulatory agencies, including, but not limited to, payphone dial-around compensation surcharges, PICC charges, End-User Common Line charges and Universal Service Fund charges, plus any reasonable administrative charge KMC may establish for its customers for administering these pass-through charges; and c) Applicable ancillary fees and charges in accordance with the applicable KMC Tariff or the applicable provisions of the KMC Service Guide, as these fees may be modified from time to time by KMC upon written notice to Customer.

**8. Default.** In the event of a breach of any material term or condition of the Agreement (except for payment breach) by a Party the other Party may terminate the Agreement upon 30 days written notice, unless the breaching Party cures the breach during the 30 day period. If a breach cannot be reasonably cured within a 30 day period such cure period shall be extended as may be reasonably required to cure such default. If Customer fails to pay any amounts due hereunder by the Due Date or fails to provide any security or additional security within the period required under the Agreement and such failure remains uncured for 10 days after Customer's receipt of notice thereof from KMC, KMC may immediately terminate the Agreement and all Service Attachments executed hereunder. If KMC terminates the Agreement for breach by Customer, then, in addition to any other rights or remedies available to KMC at law or in equity, Customer shall be liable to KMC for Termination Charges for all terminated Services as specified in the applicable Service Attachments. Termination by either party of an Attachment does not waive any other rights or remedies it may have under the Agreement.

**9. Termination Charges.** If (i) Customer terminates any Service provided by KMC under the Agreement and the applicable Service Attachment for convenience prior to the expiration of the applicable Service Term set forth in such Service Attachment, or (ii) KMC terminates this Agreement and/or any Service Attachment pursuant to Section 8 hereof, then, in addition to any other rights or remedies that may be available to KMC at law or in equity, Customer shall pay KMC the Termination Charge specified in the applicable Attachment for all terminated Services.

## GENERAL TERMS AND CONDITIONS

**Compliance with Laws.** During the Term, the Parties shall comply with all local, state and federal laws and regulations applicable to the Agreement, the Services provided hereunder and their respective businesses. Further, each Party shall obtain, file and maintain any tariffs, permits, certifications, authorizations, licenses or similar documentation as may be required by the FCC, a state Public Utility or Service Commission, or any other governmental body or agency having jurisdiction over its business. If KMC withdraws any tariff that applies to the Services, the tariff terms and conditions then in effect will continue to apply to the Services.

**10. Abuse of Service.** KMC's Services may be used only for lawful purposes and may not be used in violation of KMC's Acceptable Use Policy ("AUP") set forth in KMC's web site at <http://www.kmctelecom.com/services/DIAAUP.cfm> (as amended or supplemented from time to time) or any operating rule, policy, or guideline set by KMC. KMC will cooperate with law enforcement if criminal activity is suspected. KMC may immediately suspend or terminate a Service if such Service is used by Customer or any of its end users in a manner that (1) restricts or inhibits any person, whether a user of KMC or otherwise, in its use or enjoyment of KMC's Service or any other systems, services or products; (2) attempts to avoid payment, in whole or in part, of any charges by any means or device (non-payment of billed charges will not be considered abuse of service for purposes of this Section); (3) is in violation of any local, state, federal, or international law or regulation or guidelines. KMC will attempt to notify Customer before suspending or terminating a Service to the extent doing so does not interfere with its ability to prevent abuse of Service as determined by KMC.

**11. Warranties.** Except as may be provided for in the applicable Service Attachments, SERVICES PROVIDED UNDER THE AGREEMENT ARE PROVIDED WITHOUT ANY WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, INFRINGEMENT, COMPLETENESS, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. KMC HEREBY SPECIFICALLY DISCLAIMS ANY LIABILITY TO CUSTOMER FOR INTERRUPTIONS AFFECTING THE SERVICES FURNISHED UNDER THE AGREEMENT THAT ARE ATTRIBUTABLE TO CUSTOMER'S INTERCONNECTION FACILITIES OR TO CUSTOMER'S EQUIPMENT FAILURES, OR TO CUSTOMER'S BREACH OF THE AGREEMENT.

**12. Limitation of Liability.** IN NO EVENT WILL KMC OR ANY OF ITS AFFILIATES BE LIABLE TO CUSTOMER OR ANY OF ITS AFFILIATES OR EMPLOYEES OR TO ANY THIRD PARTY FOR: a) ANY LOSS OF PROFIT OR REVENUE, OR FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SIMILAR OR ADDITIONAL DAMAGES, WHETHER INCURRED OR SUFFERED AS A RESULT OF THE UNAVAILABILITY OF FACILITIES, PERFORMANCE, NON-PERFORMANCE, TERMINATION,

BREACH, OR OTHER ACTION OR INACTION UNDER THE AGREEMENT, OR FOR ANY OTHER REASON, EVEN IF CUSTOMER ADVISES KMC OF THE POSSIBILITY OF THIS LOSS OR DAMAGE; OR b) FOR ANY OUTAGE OR INCORRECT OR DEFECTIVE TRANSMISSIONS, OR ANY DIRECT OR INDIRECT CONSEQUENCES THEREOF. CUSTOMER AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF BREACH OF THE WARRANTIES DESCRIBED IN THIS SECTION SHALL BE LIMITED TO THE SERVICE CREDITS DESCRIBED IN THE APPLICABLE SERVICE ATTACHMENTS OR TERMINATION OF THE RELEVANT SERVICE.

**13. Force Majeure.** Other than with respect to failure to make payments due under the Agreement, neither Party shall be liable under the Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused by, or due to any cause beyond its reasonable control, including, but not limited to, fire, earthquake, flood, water, the elements, acts of God, third Party labor disputes, utility curtailments, cable cuts, power failures, explosions, civil disturbances, vandalism, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third Parties.

**14. Indemnification.** Customer shall defend, indemnify and hold harmless KMC and its Affiliates, directors, officers, shareholders, employees, representatives and agents from any and all claims, taxes, penalties, interest, expenses, damages, lawsuits, actions, demands or other liabilities (including without limitation, reasonable attorneys' fees and court costs) relating to or arising out of or in connection with Customer's use, sale, resale or sharing of the Services, including (i) any claims arising out of any failure, interruption or degradation in Services provided to Customer hereunder; (ii) any claims that may be asserted by parties other than Customer who have use of or access to the Services; or (iii) any claims relating for libel, slander, invasion of privacy or other claims arising out of the use by the Customer or any end-user of the Services or the transmission of telecommunications or information through the Services. Each Party shall defend, indemnify and hold harmless the other Party and its Affiliates, directors, officers, shareholders, employees, representatives and agents from any and all claims, taxes, penalties, interest, expenses, damages, lawsuits, actions, demands or other liabilities (including without limitation, reasonable attorneys' fees and court costs) relating to or arising out of the gross negligence or willful misconduct of the indemnifying Party. For the purpose of the Agreement the term "Affiliate" shall mean any person or entity controlling, controlled by or under common control with a Party.

**15. Relationship of the Parties.** Nothing in the Agreement, or in the course of dealing between the Parties pursuant to the Agreement, shall be deemed to create between the Parties (including their respective Affiliates, directors, officers, employees and agents) a partnership, joint venture, association, employment relationship or any other relationship, other than that of independent contractors with respect to each other. Neither

## GENERAL TERMS AND CONDITIONS

Party shall have the authority to commit or legally bind the other Party in any manner whatsoever, including, but not limited to, the acceptance or making of any agreement, representation or warranty.

**16. Confidential Information.** The Parties agree that the Agreement is and shall be kept confidential. Neither Party shall divulge or otherwise disclose any of the provisions of the Agreement to any third Party without the prior written consent of the other Party, except that either Party may make disclosure to those required for the implementation of the Agreement, and to purchasers and prospective purchasers, auditors, attorneys, financial advisors, lenders and prospective lenders, investors and prospective investors, provided that in each case the recipient agrees in writing to be bound by the confidentiality provisions set forth in this section. In addition, either Party may make disclosure as required by a court order or as otherwise required by law or in any legal or arbitration proceeding relating to the Agreement. If either Party is required by law or by interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process to disclose the provisions of the Agreement, it will provide the other Party with prompt prior notice of this request or requirement so that the Party may seek an appropriate protective order or waive compliance with this Section. The Party whose consent to disclose information is requested shall respond to such request, in writing, within 5 business days of the request by either authorizing the disclosure or advising of its election to seek a protective order, or if the Party fails to respond within the prescribed period the disclosure shall be deemed approved.

**17. Publicity.** No public statements or announcements relating to the Agreement shall be issued by either party without the prior written consent of the other party.

**18. Notices.** All notices required or permitted hereunder shall be in writing and shall be deemed given: (i) when delivered in person, (ii) the next business day after deposit with a commercial overnight delivery service for next day delivery; or (iii) upon receipt if sent by United States mail, postage prepaid, registered or certified mail, return receipt requested. All notices shall be addressed to the recipient party at the address set forth in the Cover Sheet or other address a party may designate in writing from time to time.

**19. Equipment.** From time to time during the Term of the Agreement KMC may, in connection with providing Services to Customer, locate equipment in Customer's premises. All such equipment shall be listed in the applicable order for Services executed by the Parties from time to time, which may be amended by KMC from time to time if KMC changes the equipment configuration. Customer acknowledges and agrees that all right, title and interest in such equipment shall at all times be vested, and remain, in KMC. Customer shall return all such equipment in the same condition as received (reasonable wear and tear excluded) to KMC upon the expiration or termination of the applicable Service Order. If for any reason Customer fails to promptly return such equipment to KMC, Customer

acknowledges and agrees KMC shall have the right to enter Customer's premises to remove such KMC equipment. If KMC enters Customer's premises to recover such equipment or initiates legal action in connection with the recovery of the KMC equipment, Customer shall indemnify and hold KMC harmless from any costs, fees, actions, recovery, suits and/or damages that may be suffered by KMC or any third party in connection with such proceedings and shall reimburse KMC for all court costs and legal fees (including attorney's fees) incurred by KMC in connection with such recovery proceedings or Customer's indemnity.

**20. Assignment.** Customer may not assign or transfer its rights or obligations under the Agreement without KMC's prior written consent. KMC may assign the Agreement without Customer's consent. Any assignment or transfer without the required consent is void. The Agreement will inure to the benefit of and be binding upon Customer's permitted successors and assigns.

**21. Waiver and Amendment.** No waiver of any term or condition of the Agreement will be enforceable unless it is in writing and signed by the both Parties. No failure or delay by either Party in exercising any right, power or remedy will operate as a waiver of this right, power or remedy, unless otherwise provided in the Agreement. The waiver by either Party of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not operate or be construed as a waiver of any subsequent breach of this covenant, condition or agreement. No modifications or amendment of the Agreement will be effective or enforceable, unless in writing and signed by both Parties.

**22. Severability.** Any provision of the Agreement that is deemed invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision of the Agreement and the remaining provisions the Agreement shall remain in full force and effect to the greatest extent permitted by law.

**23. Survival of Provisions.** Sections 4, 6, 7, 8, 9, 11, 12, 13, 14 and 15 survive the termination or expiration of the Agreement.

**24. Governing Law.** The Agreement shall be governed by the laws of the State of New York without regard to any choice of law principles that could result in the application of the laws of any other jurisdiction. The Parties agree that any legal action or proceeding with respect to or arising out of the Agreement shall be brought in New York County, New York. Each Party accept for itself and in respect of its own property, generally and unconditionally, the jurisdiction of the aforesaid courts. The Parties hereby waive any right to stay or dismiss any action or proceeding under or in connection with the Agreement brought before the foregoing courts on the basis of forum non convenience. KMC shall be entitled to recover attorneys' fee and court costs resulting from any claim or suit by KMC enforcing its rights under this Agreement.



## GENERAL TERMS AND CONDITIONS

**Integration.** The Agreement, this General Terms and Conditions and all Attachments hereto, and all exhibits, Tariffs or addenda incorporated to the Agreement, represent the entire agreement between the Parties with respect to the Services and the Agreement and supersede and merge all prior agreements, promises, understandings, statements, representations, warranties, indemnities and inducements to the making of the Agreement relied upon by either Party, whether written or oral.

ATTACHMENT INTERROGATORY NO. 15  
CONFIDENTIAL  
KMC RESPONSE - 000317

# KMC Telecom

## VOICE ORIENTATION AND TERMINATION SERVICES TO VOIP BROADBAND END-USERS ATTACHMENT

This Voice Origination and Termination Services to VoIP Broadband End-Users Attachment (including any attached exhibits or schedules, together this "Attachment") is entered into by and between KMC Telecom \_\_ LLC, a Delaware limited liability company ("KMC"), and \_\_\_\_\_, a \_\_\_\_\_ ("Customer"). This Attachment is made part of the KMC Telecom Master Services Agreement between KMC and Customer dated as of \_\_, \_\_, 200\_\_ (the "Agreement").

1. **Services Provided.** KMC will provide Voice Origination and Termination Services to VoIP Broadband End-Users (the "Origination and Termination Services") to Customer under this Attachment pursuant to the terms of this Attachment, the Agreement and any applicable KMC Tariffs or Business Guide, as amended or supplemented from time to time.

1.1 **Certain Definitions.** The following capitalized terms shall have the following meaning. Capitalized terms used in this Attachment but not specifically defined herein shall have the meaning given to such terms in the Agreement.

**1-Way Inbound PRIs ("Termination").** 1-Way Inbound PRIs are PRI Services that are established solely for the ingress of Customer's Enhanced Service traffic to KMC's network for termination to third party's networks within the local calling areas specified in Schedule A attached hereto, which Schedule may be amended or supplemented by KMC from time to time.

**1-Way Outbound PRIs ("Origination").** 1-Way Outbound PRIs are PRI Services that are established solely for the egress of traffic received by KMC from third party's networks which are destined for termination to Customer's Enhanced Service end users within the local calling areas specified in Schedule A attached hereto, which Schedule may be amended or supplemented by KMC from time to time.

**"Enhanced Services"** shall have the meaning set forth in 47 C.F.R. § 64.702(a) which refers to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.

**"Enhanced Service Provider" or "ESP"** shall refer to a provider of Enhanced Services.

**"PRI Services"** have the meaning set forth in Section 1.2 of this Attachment.

**"Transmission Control Protocol/Internet Protocol" or "TCP/IP"** is a networking protocol that provides communication across interconnected networks, between computers with diverse hardware architectures and various operating systems. "TCP" is a connection-oriented protocol that breaks a message into packets, marks the packets with sequence numbers, uses port IDs to specify which application running on the system is sending or receiving the data, and sends the packets over the network. "IP" is the messenger protocol that addresses and sends packets, relying primarily upon IP address, subnet mask and default gateway information supplied by the sender.

**"Virtual Foreign Exchange"** also referred to as "virtual NXX," "virtual NPA/NXX," and "VNXX," shall mean those instances when telecommunications carriers offers services where the LEC assigns a telephone number normally associated with one ILEC local calling area to a customer physically located in another "distant" ILEC area in order to give the customer a "local presence" in the "distant" area. Typically, calls to CLEC customers are physically routed through CLEC facilities located outside the originating caller's ILEC local calling area. With a VNXX arrangement, the call is delivered to the subscriber outside that area as well.

**"Voice Over Internet Protocol" or "VOIP"** Internet Voice, also known as Voice over Internet Protocol (VoIP) is technology that allows subscribers to make telephone calls, within the United States, using a broadband Internet connection instead of a regular (or analog) phone line. VoIP is an enhanced service and utilizes TCP/IP as a means to provide two way real time voice communications over public internet backbone packet networks. VOIP as defined herein is exclusively limited to traffic which utilizes TCP/IP as a transmission protocol from the customer's originating broadband service or equipment to the terminating equipment or gateway

1.2 **Service Description.** Origination and Termination Services will be provided via 1-Way Inbound PRI Services and 1-Way Outbound PRI Services as described herein.

- A. **PRI Services.** "Primary Rate Interface Service" or "PRI Service" means a multiplexed digital broadband interface based on "International Telecommunication Union - Telecommunication Standardization Sector" ("ITU-T") ISDN Recommendations for termination of voice, data, or image traffic over "Integrated Services Digital Network Primary Rate Interface" ("ISDN PRI"). PRI Service utilizes a standard T1.5 Mbps digital transmission facility formatted into twenty-



four 64 Kbps channels. Twenty-three of the channels are designated as "B channels," or "bearer channels," that are used to carry content. The 24th channel is the "D channel," or "data channel," that carries out-of-band routing and signaling information required for controlling the calls on all of the B channels. The D channel is provisioned for use by Customer, its End Users and the End Users of Customer's affiliates, clients, and resellers (collectively, "End Users"). PRI Service will utilize B8ZS line coding to allow 64 Kbps clear channel transmission. PRI Service will utilize 5ESS National ISDN protocol when a Lucent 5ESS switch is used for connectivity. Services, features, and options provided under this agreement include: signal loss plan optionable at 0dB, 3dB, or 6dB loss; toll call blocking; call hunting; Direct Inward Dialing trunk termination; Direct Inward Dialing blocks/numbers; billing telephone number blocking; and optional caller ID with number or calling party number transparency. Customer shall also have the option of ordering PRI Services in the NFAS configuration, in which up to eight PRI Services are supported by a single D channel on one of the PRI Services. Each B channel carries traffic at speeds of up to 64 Kbps, while the D channel carries signaling information for the B channels; provided, however, that actual traffic speeds to Customer's end-user may vary and be lower than 64 Kbps, depending on the underlying PSTN or IP connection to the Internet (as hereinafter defined). End Users dialing into the Public Switched Telephone Network ("PSTN") using a designated phone number assigned to a PRI Service shall be routed by KMC using a B channel on such PRI Service to Customer's access equipment connected to such PRI Service. Each PRI Service shall be provisioned as either 1-Way Inbound PRIs, 1-Way Outbound PRIs, all as specifically set forth in the applicable Service Order. Each PRI Service includes [optional Caller ID], B8ZS, ESF, and ascending clockwise circular hunt sequence functionalities.

- B. Each PRI Service shall be connected to Customer's access equipment via U.S. telecommunications industry standard DS3 technology. KMC will deliver PRI Service via DS3 hand off to the Customer at the KMC Super Node patch panel in the location specified in Schedule B attached hereto, which may be amended by KMC from time to time. KMC will, at its discretion, aggregate Local Calling Areas ("LCAs") onto DS3s at the KMC Supernode locations. Customer will be responsible for transport of DS3 PRI Services from the location specified above to Customer's premises or equipment.
- C. For calls inbound to KMC's network, Customer shall deliver "Calling Party Number" ("CPN"); "Automatic Number Identification" ("ANI"); and other "Originating Line Information" ("OLI") on all traffic. KMC agrees to pass all CPN, ANI, and other OLI provided by Customer or otherwise available to KMC to: (i) in the case of 1-Way Outbound PRI traffic, the Customer; and (ii) in the case of 1-Way Inbound PRI traffic, to the final Local Exchange Carrier Switch associated with the called telephone number for each call delivered. If KMC is assessed any fees or charges, including, without limitation, any switched access charges or other intercarrier compensation fees or charges as a result of Customer's failure to deliver CPN, ANI or other OLI, Customer agrees to reimburse KMC for all such fees and charges assessed on KMC and to indemnify and hold KMC and any of its affiliates, subsidiaries, employees, shareholders, owners, vendors or representatives harmless from any and all damages, suites, charges, fees or losses (including attorneys' fees) associated with such fees or charges or with Customer's failure to provide the applicable CPN, ANI or OLI.
- D. KMC's ingress and egress facilities shall be "Signaling System 7" ("SS7") or "Integrated Services Digital Network" ("ISDN") and KMC shall deliver SS7 or ISDN signaling to any and all underlying vendors or carriers in the ingress/egress call processing and termination. KMC will not modify any SS7 or ISDN-based messaging or signaling delivered by Customer, except as is necessary in processing traffic in accordance with industry standards; nor shall KMC suppress any SS7 or ISDN messaging or signaling delivered by Customer. The PRI Services shall be provisioned with SS7 or ISDN signaling in accordance with industry standards.

## 2. Representations and Use Restrictions.

**2.1 Traffic Restrictions.** Customer represents and warrants that the Origination and Termination Services purchased and utilized pursuant to this Attachment shall be used exclusively for VOIP origination or termination of voice traffic originating on an IP or IP enabled phone utilizing a broadband connection. Customer shall not terminate any traffic over Origination and Termination Services provided under this Attachment that does not meet the restrictions set forth herein. If Customer at any time terminates or originates any traffic over the Origination and Termination Services purchased hereunder in violation with the terms of use provided for herein, KMC shall have the right to immediately terminate the Agreement and any Origination and Termination Services purchased by Customer and charge to Customer the applicable Termination Fee, any fees associated with the service violation, as well as any amounts paid or that may become payable by KMC. Such fees may include, but may not be limited to, charges associated with intercarrier compensation. Customer hereby acknowledges that KMC will rely on the representation and warranty made in this section as the legitimate basis to originate and terminate the traffic delivered hereunder over local exchange services, and that the pricing provided herein is dependent upon such routing. Customer hereby agrees to indemnify and hold KMC and all of its affiliates, subsidiaries, shareholders, employees, owners, vendors or representatives harmless against any and all fees, charges, suites, damages or losses to KMC (including attorneys' fees and court costs) arising or relating to any breach of the representation and warranty made by Customer in this section, including without limitation, imposition of switched access charges, fines, penalties, forfeitures or interest.

**2.2 Restriction on Resale.** Customer shall not resale any portion of the Origination and Termination Services provided under this Attachment on a wholesale basis to a telecommunications carrier or an ISP.



**2.3 Violation of Restrictions.** KMC may immediately terminate this Attachment, the Agreement or any Services provided by KMC hereunder and thereunder and bill Customer any and all termination charges associated with any such terminated Services in the event Customer routes any traffic over the Origination and Termination Services provided hereunder in violation of this Section 2.

**2.4 Monitoring and Audits.** KMC will monitor all traffic routed by Customer over the Origination and Termination Services provided hereunder. KMC shall have the right to audit on a quarterly basis the nature of the traffic routed by Customer over the Origination and Termination Services. In addition, if KMC suspects, in the course of monitoring the traffic, that Customer is routing traffic over KMC's network in violation of this Attachment or the Agreement, KMC may immediately initiate an unscheduled audit. Customer shall cooperate with KMC, at Customer's sole cost and expense, with any such audit activities and shall provide KMC on a timely basis all information requested by KMC in connection with such audit, including, without limitation, all applicable call detail records in such detail as is requested by KMC.

**3. Nature of Traffic.** Customer and KMC hereby acknowledge their mutual understanding that VOIP traffic may lawfully be terminated into the "Public Switched Telephone Network" ("PSTN") over local exchange telecommunications services and are exempt from the imposition of interexchange switched access charges. In the event that any state or federal regulatory agency, court or other governmental authority or any LEC rules, or interpreters any existing rules, that find that the transmission of VOIP traffic or any other Enhanced Services provided hereunder as contemplated in this Agreement is subject to the imposition of switched access charges or any other charges other than intercarrier reciprocal compensation, KMC and Customer shall each promptly notify the other of such ruling and/or interpretation. KMC shall have the right, upon learning of such event, to immediately demand assurance of payment in the form of a cash deposit or a standby letter of credit in form acceptable to KMC to cover the amount of three (3) months of potential liability from such switched access or other similar charges. If Customer fails to provide such deposit within 2 business days from demand by KMC, KMC may terminate the provision of PRI Service to Customer under this Attachment in the affected geographic area[s]. Customer agrees to indemnify, hold KMC and all of its affiliates, subsidiaries, employees, shareholders, agents, vendors and representatives harmless and immediately pay, in addition to the charges for Origination and Termination Services set forth herein, any and all damages, suits, costs, charges or fees (including attorneys' fees and court costs) arising or resulting from such ruling or interpretation, including, without limitation, any intercarrier compensation fees assessed or that may potentially be assessed on KMC or any of its affiliates. In addition, to the extent necessary to address any claim by any LEC or any legal ruling, Customer agrees to provide a "Percent Interstate Usage" ("PIU") factor to KMC to define the jurisdictional nature Customer's traffic delivered to KMC for termination over KMC's network or that of any underlying vendor engaged by KMC for such purposes.

Customer may, in accordance with this Attachment and the Agreement, provide PRI Services for termination in a Virtual Foreign Exchange Services, provided, however, that if KMC is billed or is otherwise requested or instructed to pay switched access charges or other similar charges as a result of termination of Virtual Foreign Exchange traffic by Customer, Customer shall immediately reimburse KMC for any such charges. Customer agrees to indemnify, hold KMC and all of its affiliates, subsidiaries, employees, shareholders, agents, vendors and representatives harmless and immediately pay, in addition to the charges for Origination and Termination Services set forth herein, any and all damages, suits, costs, charges or fees (including attorneys' fees and court costs) arising or resulting from the termination by Customer of Virtual Foreign Exchange traffic, including, without limitation, any intercarrier compensation fees assessed or that may potentially be assessed on KMC or any of its affiliates. In addition, KMC shall have the right to immediately demand assurance of payment in the form of a cash deposit or a standby letter of credit in form acceptable to KMC to cover the amount of three (3) months of potential liability from such Virtual Exchange Traffic. If Customer fails to provide such deposit within 2 business days from demand by KMC, KMC may terminate the provision of PRI Service to Customer under this Attachment in the affected geographic area[s].

**4. Limitation of Liability.** Notwithstanding any other part of this Agreement, no representation is made by KMC or any of its affiliates regarding the liability of Customer to third party LECs either directly or indirectly (including, without limitation, as part of a "Meet Point Billing" ("MPB") arrangement) for the payment of switched access charges in connection with Customer traffic routed for termination by KMC or any of its affiliates over the Origination and Termination Services provided pursuant to this Attachment.

**5. Service Fees.** The fees and charges for Origination and Termination Services shall be set on an individual case basis and shall be specified in the relevant Service Order. Customer shall specifically identify in each Service Order whether Customer desires to purchase 1-Way Inbound PRIs or 1-Way Outbound PRIs. KMC will provision the Origination and Termination Services in accordance with Customer's Service Order. The Monthly Recurring Charge (as set forth in the applicable Service Order) for 1-Way Inbound PRIs is based upon usage by Customer of such 1-Way Inbound PRIs of not more than 400,000 minutes of use per calendar month per 1-Way Inbound PRIs within a trunk group (the "Monthly Threshold") (i.e., a trunk group with only one 1-Way Inbound PRI would have a Monthly Threshold of 400,000 terminating minutes per month, in the aggregate, and a trunk group with ten terminating 1-Way Inbound PRIs would have a monthly threshold of 4,000,000 terminating minutes per month, in the aggregate). If in any calendar month Customer surpasses the Monthly Threshold, then in addition to the Monthly Recurring Charges set forth in the applicable Service Order, Customer shall pay a per minute of use charge for each minute in excess of the applicable Monthly Threshold of \$0.01 per minute.

**6. Term.** The term of this Attachment shall commence on the date this Attachment is executed by KMC and shall continue for a period of one (1) year. Notwithstanding the foregoing, the terms and conditions of the Agreement and this Attachment shall be applicable, with respect to each Origination and Termination Service, until the termination or expiration of the Service Term for such Origination and Termination Service, as set forth in Section 7 below.

7. **Service Term.** The term of each Origination and Termination Service shall commence on the date KMC delivers the Origination and Termination Service and shall continue for the period set forth in the applicable Service Order (the "Initial Service Term"). After the expiration of the Initial Service Term of a particular Origination and Termination Service, and provided Customer is not in default hereunder, the term of the Service shall automatically renew for successive 1 year terms ("Renewal Term") unless terminated by KMC or Customer on written notice at least 30 days prior to the expiration of the Initial Service Term or the Renewal Term. The Initial Service Term and each Renewal Term shall be referred to collectively as the "Service Term").

8. **Ordering and Implementation.** The Origination and Termination Services shall be ordered by Customer and implemented by KMC in accordance with KMC's then current standard ordering procedure, which may be amended or supplemented by KMC from time to time.

9. **Termination Fee.** The Termination Fee with respect to each Origination and Termination Service means an amount in cash equal to the monthly charges for such Origination and Termination Service multiplied by the number of months remaining in the Initial Service Term relating to such Origination and Termination Service, or, upon the expiration of the Initial Service Term, the amount of months remaining in the then current Renewal Term.

10. **911/E911 and CALEA.** Customer and KMC acknowledge their awareness of various pending state and federal regulatory actions which may affect the nature and treatment of VoIP traffic including the determination as to the appropriate obligations of VoIP providers with regard to 911/E911 and CALEA obligations. KMC and Customer further recognize that additional governmental action, ruling, or interpretation thereof, including but not limited to legislative action, might be taken to address the public safety obligations of VoIP providers. KMC and Customer mutually agree to immediately conform this Agreement and the resulting network service arrangements in order to comply with any regulatory or governmental law, action, order or ruling, or the interpretation or application thereof related to such obligations.

10.1. **911/E911.** KMC and Customer agree Customer will provide all of Customer's end users with notice that VoIP services may not be 911/E911 and CALEA compliant and Customer shall obtain from its end users adequate waivers releasing Customer and KMC of any and all liabilities that may arise out of claims that could be brought related to 911/E911 and CALEA compliance issues. To the extent that Customer provides alternative 911 services (herein referred to as "Alternative 911") on a mandatory or optional basis, Customer shall provide its end users with adequate notice as to: (1) the process for ordering, establishing, and maintaining the Alternative 911 services; (2) the feature functionality differences between the Alternative 911 service and standard 911/E911 services; and, (3) notice that KMC will not be liable to customer for any third party claims arising out of Customer's provision of such services to Customer's end users. KMC and Customer agree to work jointly to establish business processes, where necessary, to address the provisioning of Alternative 911 services on an ICB basis. Customer agrees to compensate KMC for any additional costs associated with KMC's provisioning of services in support of Customer's Alternative 911 service arrangements.

KMC and Customer agree that KMC's sole responsibility with regard to the provision of 911/E911 or Alternative 911 services for Customer's end users is the obligation to ensure that the interconnection trunking arrangements are 911/E911 compatible. Customer bears sole responsibility for the provisioning of 911/E911 or Alternative 911 services to its end users and for any costs associated with the provisioning of these services including but not limited to interconnecting with the appropriate 911 Public Service Access Point ("PSAP") and the payment of any governmental fees or assessments related to 911/E911 or Alternative 911 services. Customer agrees to indemnify and hold KMC and all of its affiliates, subsidiaries, employees, shareholders, agents, vendors and representatives harmless for any and all claims, damages (direct and indirect), suits, costs, charges or fees (including attorney's fees and court costs) arising from or related to the provision of 911/E911 services associated with the provision of Customer's VoIP services and any Services described herein.

10.2. **CALEA.** KMC and Customer understand and agree that there is uncertainty regarding the obligations of VoIP providers as it relates to compliance with CALEA obligations. Nonetheless, KMC and Customer agree to put forth their best efforts in order to respond within the requested parameters to any CALEA request presented related to the Services offered pursuant to this Agreement or to services that Customer may be providing utilizing Services set forth in this Agreement.

Notwithstanding the forgoing, KMC and Customer agree that Customer bears the sole responsibility with regard to compliance with CALEA obligations and any requests that may be presented related to Services provided under this Agreement. Customer agrees to indemnify and hold KMC and all of its affiliates, subsidiaries, employees, shareholders, agents, vendors and representative harmless for any and all claims, damages (direct and indirect), suits, costs, charges or fees (including attorney's fees and court costs) arising from or related to compliance with CALEA obligations that arise from the provision of Customer's VoIP services and any Services described herein.

11. **Monitoring and Audit.** KMC will monitor the traffic

WITNESS WHEREOF, the KMC and Customer have caused their duly authorized representatives to execute this Attachment in counterparts in accordance with the terms and conditions of the Agreement:

**KMC Telecom**

**[Customer]**

By: \_\_\_\_\_

By: \_\_\_\_\_

me: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**DOCKET 041144-TP  
KMC CONFIDENTIAL RESPONSE TO  
INTERROGATORY NO. 40  
KMC RESPONSE 0000415**

From July 2002 through April 2004, local calls originated by Customer "X" over its KMC provided Primary Rate ISDN services in Fort Myers and Tallahassee were handled as follows: calls to be terminated to a KMC customer served on the same KMC switches as was Customer X did not get handed off to Sprint. Customer X's calls to be terminated locally to non-KMC customers in Ft. Myers or Tallahassee were delivered to Sprint over the local interconnection trunks. KMC had no business requirement to track those calls in the manner requested by Sprint, e.g. how many were terminated on KMC's switch and how many were terminated by Sprint. Therefore, we do not know the percentage of calls terminated by KMC or the percentage of calls terminated by Sprint.

Having stated that, we are also unable to access any historical local "raw records" for any period prior to 2004. KMC may be able to access "raw records" for the four (4) month period in 2004 requested by Sprint. If we find that data, then it may be feasible to build an analysis routine to compare all the records for a ratio as requested in this interrogatory. Assuming KMC could locate the data, this would be very a labor intensive and costly activity that KMC estimates would take at least 30 to 45 business days to complete.

**Johnson, Marva**

**From:** Desai, Rajan  
**Sent:** Thursday, October 14, 2004 1:58 PM  
**To:** Johnson, Marva  
**Cc:** Stroh, George; Ferry, James  
**Subject:** AWP - FW: 000238830623 NRC \$1,768,453.00 MRC \$0.00 BAN 274R495021570

Marva:

Here is the dispute that was sent to Sprint for UniPoint Switched Access in Tallahassee. This is for the first time the charges appeared. We sent periodic correspondence as more charges appeared, letting Sprint know that we were not paying the charges and were attaching them to this dispute. Fort Myers is coming up and falls under the same scenario.

-Raj

-----Original Message-----

**From:** Fuller, Fred  
**Sent:** Thursday, December 04, 2003 3:03 PM  
**To:** 'dec.collect@mail.sprint.com'  
**Subject:** 000238830623

Sprint:

KMC is disputing the back billing for intrastate access on BAN 274R49502570. KMC does not generate the volume of intrastate access for which Sprint is back billing. In addition, Sprint has provided insufficient detail to support the invoiced charges. If upon further review Sprint is not in agreement with this dispute please provide call detail records and applicable tariff references supporting Sprint's assessment of the referenced charges and any assertion that Sprint has regarding its entitlement to back bill for the specified period.

Please let me know if you have any questions.

Fred Fuller  
Cost Analyst, Access Cost Management  
KMC Telecom  
(678) 985-6160



274R495021570  
12-04-03.doc (33...

KMC 000889



## Billing Dispute Form

National Exchange Access  
Center  
248 West Monroe Street  
Decatur, IN 46733

\*ALL disputes must be sent within 90  
days of the bill date.

**DATE:** 12-04-03  
**CLEC NAME:** KMC Telecom  
**CLEC CONTACT NAME:** Fred Fuller  
**CLEC PHONE #:** 678-985-6160  
**CLEC FAX #:** 678-985-6200  
**BAN NUMBER:** 274R495021570  
**INVOICE NUMBER:** R49502157003316  
**BILL DATE:** 11/12/2003  
**TOTAL DISPUTE:** \$1,768,453.00

### **REASON FOR DISPUTE:**

KMC is disputing the charges associated with PON EC-TERM ACC MOU based on the premise that KMC does not generate the volume of intrastate access for which Sprint is back billing.

- Please send ALL disputes to the attention of the "NEAC Billing Department", fax # 219 728-2131.
- All CLECs will receive a faxed confirmation when disputes are completed.
- Additional pages may be attached or actual copies of the bill with the items that are being disputed.
- Disputes can be emailed to: [clec.collect@mail.sprint.com](mailto:clec.collect@mail.sprint.com)



**Johnson, Marva**

**From:** Desai, Rajan  
**Sent:** Thursday, October 14, 2004 2:01 PM  
**To:** Johnson, Marva  
**Cc:** Stroh, George; Ferry, James  
**Subject:** AWP - FW: 000238840239 NRC \$658,645.00 MRC \$0.00 BAN 394R495036570

Marva:

Here is the original Fort Myers dispute.

-Raj Desai  
Manager, Access Cost Management  
KMC Telecommunications  
678-985-6431

-----Original Message-----

**From:** Fuller, Fred  
**Sent:** Thursday, December 04, 2003 3:20 PM  
**To:** 'dec.collect@mail.sprint.com'.  
**Subject:** 000238840239

Sprint:

KMC is disputing the back billing for intrastate access on BAN 394R495036570. KMC does not generate the volume of intrastate access for which Sprint is back billing. In addition, Sprint has provided insufficient detail to support the invoiced charges. If upon further review Sprint is not in agreement with this dispute please provide call detail records and applicable tariff references supporting Sprint's assessment of the referenced charges and any assertion that Sprint has regarding its entitlement to back bill for the specified period.

Please let me know if you have any questions.

Fred Fuller  
Cost Analyst, Access Cost Management  
KMC Telecom  
(678) 985-6160



394R495036570  
12-04-03.doc (33...



## Billing Dispute Form

National Exchange Access  
Center  
248 West Monroe Street  
Decatur, IN 46733

\*ALL disputes must be sent within 90  
days of the bill date.

**DATE:** 12-04-03  
**CLEC NAME:** KMC Telecom  
**CLEC CONTACT NAME:** Fred Fuller  
**CLEC PHONE #:** 678-985-6160  
**CLEC FAX #:** 678-985-6200  
**BAN NUMBER:** 394R495036570  
**INVOICE NUMBER:** R49503657003316  
**BILL DATE:** 11/12/2003  
**TOTAL DISPUTE:** \$658,645.00

### **REASON FOR DISPUTE:**

KMC is disputing the charges associated with PON EC-TERM ACC MOU based on the premise that KMC does not generate the volume of intrastate access for which Sprint is back billing.

- Please send ALL disputes to the attention of the "NEAC Billing Department", fax # 219 728-2131.
- All CLECs will receive a faxed confirmation when disputes are completed.
- Additional pages may be attached or actual copies of the bill with the items that are being disputed.
- Disputes can be emailed to: [clec.collect@mail.sprint.com](mailto:clec.collect@mail.sprint.com)

**KMC 000892**