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October 18, 1999
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Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Complaint of KMC Telecom, Docket No. 991619-TP

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and 15 copies of the Complaint of KMC Telecom Inc. and KMC Telecom Inc. II against BellSouth Telecommunications, Inc. and Request for Expedited Relief.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Yours truly,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

encl.

[Handwritten signature]
DIVISION OF RECORDS AND REPORTING

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MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A.

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FREE-RECORDS-REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of KMC Telecom Inc. and KMC
Telecom II, Inc. Against BellSouth
Telecommunications, Inc. for
Breach of Interconnection Agreement and
Request for Expedited Relief

Docket No. _____

Filed: October 18, 1999

COMPLAINT OF KMC TELECOM INC. AND KMC TELCOM II, INC.
AGAINST BELLSOUTH TELECOMMUNICATIONS, INC.
AND REQUEST FOR EXPEDITED RELIEF

KMC Telecom Inc. (KMC I) and KMC Telecom II, Inc. (KMC II) (collectively KMC), through their undersigned counsel, hereby file this Complaint against BellSouth Telecommunications, Inc. (BST) for breach of the terms of the Interconnection Agreements by and between KMC and BST. As grounds for this Complaint and demand for relief, KMC states:

I. Introduction

1. KMC is an alternative local exchange company certificated to provide local exchange services in Florida. KMC's address is:

3025 Breckenridge Boulevard, Suite 170
Duluth, Georgia 30096

2. Copies of pleadings, notices and other documents in this docket should be provided

to:

Vicki Gordon Kaufman
McWhirter Reeves McGlothlin Davidson Decker
Kaufman Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301

Morton J. Posner
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DOCUMENT NUMBER-DATE

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REGISTRATION REPORTING

Washington, DC 20007

3. KMC is a Delaware Corporation, having its principal place of business at 1545 Route 206, Suite 300, Bedminster, New Jersey 07921. KMC and its affiliates are certified providers of local exchange and/or long distance service in 23 states. In Florida, KMC is authorized as an alternative local exchange company providing telephone services in competition with BST. KMC is a facilities-based provider.

4. BST is an incumbent local exchange carrier (ILEC) as defined by § 251(h) of the Telecommunications Act of 1996 (1996 Act). BST is a Georgia corporation with its principal place of business at 675 West Peachtree Street, Atlanta, Georgia 30375. BST provides intrastate local exchange and exchange access service in Florida subject to the regulatory authority of this Commission.

5. On February 24, 1997, KMC I and BST entered into an Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996. Pursuant to § 252 of the 1996 Act, the Agreement was filed with the Commission and approved by the Commission in Order No. PSC-97-0857-FOF-TP (July 16, 1997). On February 23, 1998, KMC II opted into the Agreement between KMC I and BST. In Order No. PSC-98-0990-FOF-TP (July 20, 1998), the Commission approved the opt in. Among other things, the Agreements contemplate the smooth transition of customers from BST to KMC without continual service outages, that orders will be processed according to standard service intervals and not unreasonably rejected, and that BST will have redundant trunking in place. The Parties have been operating under the terms of the Agreements.

6. BST has breached its Agreements with KMC by failing to smoothly transition

customers selecting KMC as their carrier in accordance with the terms of the Agreements and has acted in an unreasonable and discriminatory manner in violation of the Agreements and the 1996 Act. In numerous instances, customers selecting KMC have experienced severe service outages, either during the transition to KMC or after, which are due to BST's failure to appropriately switch the customer. Such outages have occurred due to BST technicians not coordinating or missing cutover appointments, due to BST's failure to have the appropriate facilities in place and a variety of other reasons resulting from BST's conduct. These service outages can be quantified as service credits due to KMC from BST. KMC has experienced problems at every stage of the process, resulting in BST's conduct impeding KMC's ability to effectively compete with BST. In many instances, this has resulted in the customers leaving KMC to switch back to BST as well as negative publicity for KMC in the Daytona Beach community. Extreme service outages for KMC customers have also occurred during BST's transition to local number portability.

7. In addition, once customers have switched to KMC, they sometimes experience outages in service for which BST can provide no explanation. These outages frequently occur during the customers' peak business hours. The outages have an extremely adverse effect on the consumers as well as on KMC, who has entered the market to serve these customers in competition with BST.

8. BST's conduct in transitioning customers to KMC, not only injures KMC's marketing efforts, but also damages KMC's reputation for service and quality. Without the ability to smoothly and efficiently transition customers, KMC simply cannot and will not be able to compete with BST in the Florida local exchange market.

9. BST is also in violation of the 1996 Act and the Agreements by failing to timely

process KMC's complex orders in the same time and manner in which it processes its own orders. Not only has BST failed to follow the Services Interval Guide¹, it has no system by which to process these orders and the processing period is unduly lengthy in comparison to the time in which BST handles its own orders. In addition, BST unreasonably rejects KMC orders causing further unnecessary delay in the ordering and provisioning process.

10. BST has also breached its Agreements with KMC by failing to provide redundant trunking at KMC's Melbourne facilities.² KMC has repeatedly requested that BST bring its Melbourne outside plant into compliance with the Agreement's provisions regarding network architecture and ensure that the BST trunks serving the KMC switch are diversely routed and not subject to interruption. In breach of the Agreement, BST refused to do so unless KMC paid to bring BST's plant into compliance. BST provides redundant trunking to its own facilities. To refuse to do so to KMC's facilities is discriminatory.

11. New entrants, like KMC, are entirely dependent on BST for cooperation in bringing competition to the local market. Because of this dependence, BST has opportunities to delay the process of rolling out local competition at any number of points. In this case, BST has done so by failing to properly transition customers without service outages, by failing to process orders at parity, and by refusing to provide redundant trunking. BST's conduct has substantially impeded KMC's entry into the local market and threatens the effective development of competition in the

¹ This Guide sets out the standard interval time in which BST is supposed to process various types of orders.

² KMC has been in compliance with this portion of the Agreement since the Agreement's inception.

Florida local exchange market in contravention of the 1996 Act.

12. Paragraph 33 of the Agreements require that in the event of a default or violation under the Agreements, prior to taking action before a regulator, the parties must first confer to discuss the dispute and seek resolution. On August 30, 1999, a letter was sent from Roscoe C. Young II, KMC Chief Operating Officer, to BST detailing the problems discussed above. Mr. Young previously sent a letter on June 28, 1999 to BST detailing the Melbourne trunking problem. KMC attempted to unsatisfactorily resolve the dispute through the Paragraph 33 procedure.

II. Jurisdiction

13. The Commission has jurisdiction over the subject matter of this Complaint pursuant to §§ 251 and 252 of the 1996 Act. Further, the Commission has jurisdiction to consider this Complaint pursuant to § 364.01, Florida Statutes. Thus, this Commission has jurisdiction to interpret and enforce the terms of the Agreements.³

III. KMC Customers Have Experienced and Continue to Experience Service Outages Due to BST's Conduct

14. BST transitions customers who have chosen KMC for their local service in an unreasonable and discriminatory manner. Further, once those customers are KMC customers they continue to experience unexplained service outages. BST's conduct constitutes a violation of the 1996 Act, the rules of the Federal Communications Commission (FCC), and Florida statutes. In addition, BST's consistent failure to transition customers to KMC without service outages

³ The Commission has jurisdiction under the 1996 Act to enforce interconnection agreements. *Iowa Utilities Board v. FCC*, 120 F.3d 753, 804 (8th Cir. 1997), *rev'd in part and remanded in part on other grounds*, *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999).

constitutes a breach of KMC's Interconnection Agreements with BST.

15. The 1996 Act unequivocally spells out the basic duty of ILECs, like BST, to appropriately interconnect with alternative local exchange carriers (ALECs) in a reasonable and non-discriminatory manner. Section 251(c)(2) states that BST has:

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms of the agreement and the requirements of this section and section 252.

See also, 47 C.F.R. §51.305 (a).

16. Further, the Agreements themselves require BST to treat KMC in a non-discriminatory manner. Section 20.15 of the Agreements provides:

BST and KMC agree to treat each other fairly, equally and on a non-discriminatory basis for all items included in this Agreement, or related to the support of items included in this Agreement.

The inadequate and discriminatory manner in which BST switches new customers to KMC, resulting in extended service outages for such customers, are far inferior to the manner in which BST fills orders and furnishes services for its own retail customers. BST's conduct has and will continue to cause significant anticompetitive injury to KMC and on its face represents a violation

of the non-discrimination requirements of the 1996 Act, the FCC rules and the Agreements themselves.

17. The reasons for the BST service outages which severely affect KMC customers can be grouped into several categories:

A. There is a lack of coordinated "hot cuts"⁴ by BST. This lack of coordination on BST's part is due to the fact that BST's UNE processing system communicates very poorly with its RCMAC system, which is responsible for setting up the cut over date. This lack of coordination often results, for example, in a customer who chooses KMC being disconnected from BST at 8 am but not being connected to KMC until 4 pm, thus leaving the customer without service for many hours. When KMC receives a firm order confirmation (FOC) from BST, the date and time of the installation is given, but is often missed by BST. This is discriminatory behavior as to KMC because BST certainly provisions its own customers without extended outages.

B. There is a lack of coordination and communication on BST's part in regard to when it will physically implement a UNE cut over. If the KMC technician is not present at the location at the time BST decides to perform the cut over (even if BST has not notified KMC of when the cut over will occur or shows up at a different time than the time given to KMC), BST characterizes the situation as a "missed appointment" (MA) and places that order at the end of the processing line to start over again. This results in a two-week delay in processing the order

⁴ A "hot cut" occurs when the parties use current plant facilities and coordinate at each central office to minimize any customer down time during a transition from one carrier to another.

because the order has to be resubmitted and the process starts over again from day one.⁵ BST is supposed to inform KMC of the cut over date and time. In reality, this happens infrequently, if ever. Typically, BST shows up to do the cut over with no notification to KMC. When BST provides service to its customers, it carefully coordinates appointment times. To not cooperate with KMC in this regard is discriminatory.

C. Other KMC customer service outages are due to BST's attempt to implement local number portability (LNP). In many instances, BST ports the number either too early or too late, thus putting the KMC customer out of service. In addition, there are a category of customers who have switched to KMC and have received service with no problem. Then, usually at the customer's busiest time, the customer loses service. Later, the service is inexplicably restored. This generally occurs when there has been a successful number portability order and then later BST takes the number out of its switch. This results in the line going dead. The number portability problems experienced by KMC are violative of the Agreements (see §§ 13.1, 13.3, 13.4) as well as 47 C.F.R. §52.23(a)(4),(5), the FCC's rules governing number portability.

18. All of these situations (and others like them) result in irate customers who complain to KMC and believe KMC is at fault when in reality it is BST who has failed to proceed appropriately.

19. BST has improperly interfered with KMC's customer relationships. When the outages described above have occurred and customers have complained to BST, the customers have been told that the fault lies with KMC not with BST. This has resulted in a customer relations

⁵ In contrast, if for some reason BST is not ready to do a cut over, it simply moves the cut over date to the next day. This is a classic example of lack of parity.

nightmare for KMC and has damaged its reputation in the small, tightly-knit community of Daytona Beach where word-of-mouth can often make or break a business.

20. Further, the instances described above are not isolated one-time occurrences. Rather, they are indicative of a pattern and practice on the part of BST. BST's conduct has and continues to result in revenue loss to KMC as well as damage to its reputation and perhaps more importantly, hampers the advent of local competition in Daytona Beach.

21. BST's conduct is unreasonable and discriminatory conduct and violates the Agreements between the parties, the 1996 Act and Florida law

IV. BST Fails to Process KMC Orders in Accordance with the Service Intervals Guide and in the Same Manner It Processes Its Own Orders

22. Under the 1996 Act, new entrants are entitled to non-discriminatory access to BST's network. Competitors are entitled to access to BST's network that is equal to that BST provides for its own retail offerings. The Agreements also require parity. (See § 9.5). BST has failed to do this as to KMC's orders.

23. BST provides a Services Interval Guide to ALECs. The correspondence sent to ALECs concerning the Services Interval Guide states:

Your company can use these target intervals when planning firm service order requests or for general planning purposes.

However, this statement does not reflect reality.

24. The Services Order Interval Guide requires BST to process complex orders⁶ in standard intervals based on the number of lines and the types of services ordered. KMC often

⁶ Many of KMC's orders are complex orders.

experiences order processing times in excess of the standard interval time frames. Further, BST more consistently processes its own orders in compliance with the Services Interval Guide. This difference in the treatment of KMC orders is discriminatory and in violation of the 1996 Act. BST must process ALEC orders at parity with the processing of its own orders.

25. An additional processing problem occurs because often KMC orders are rejected by BST for very minor and obvious errors, which a telephone call or email to KMC could immediately correct. Instead, BST automatically rejects even the most easily correctable and obvious error and requires KMC to resubmit the entire order. BST calls this its "clarification" process. This process can add 1 to 2 weeks to order processing time. In addition, BST engages in "serial clarification." It may reject an order for one reason and then when KMC makes the correction and sends the order back, BST rejects it for another reason, rather than noting all errors at once.⁷ While the interval for a typical KMC order should be 7 to 10 days, because of the "clarification" process as well as MA (discussed above) and PF (discussed below), order processing time can exceed 30 days. Not only is this unreasonable, it is discriminatory when compared to the manner in which BST processes its own orders.

26. Finally, KMC is often notified the day of the cut over that for some reason BST does not have the appropriate facilities in place to enable it to do the cut over on the designated day. Such a delay is characterized as PF (plant facilities). When an order placed in "PF" status, which sometimes occurs more than one time as to the same order, there is inordinate delay and the order goes to the back of the bottom of the processing stack. Again, this another

⁷ Further, the errors referred to in this paragraph are minor, easily correctable "errors."

discriminatory practice employed by BST which it does not employ when processing its own orders.

IV. BST Has Breached the Agreement by Refusing to Provide Redundant Trunking at KMC's Melbourne Switched Facilities

27. Section 4 of the Agreement deals with network interconnection architecture pursuant to § 252(c)(2). Subsection 4.1.2 specifically provides:

BST shall initially interconnect to logically and diversely routed KIWC⁸ trunk circuits from BST's BIWCs⁹ to KMC's KIWC, pursuant to Sections 4.0, 5.0, 6.0, and 7.0 of this Agreement.

This provision means that BST is obligated to provide redundant trucking where BST's trunks interconnect to KMC's switch. KMC has already provided such trunking on its side of the network through a SONET ring which is diverse and protected. This network architecture is critical to ensure that there is redundancy in the network in case of an outage. Despite the fact that this is routine network architecture in the telecommunications industry, which BST provides to protect its own facilities, BST has refused to provide such trunking at KMC's Melbourne facilities.

28. Rather, BST "offered" to complete the necessary plant construction in Melbourne and charge KMC \$27,166.58 for it. This attempt to charge KMC to do what the Agreement requires not only violates the Agreement but is unreasonable and discriminatory.

29. In addition, section 8.1 of the Agreement states:

KMC and BST will jointly develop and agree on a Joint Interconnection Grooming

⁸ KIWC stands for KMC interconnect wire center.

⁹ BIWC stands for BST interconnect wire center.

Plan which shall define and detail, inter alia, prescribing standards to ensure BIWC and KIWC trunk groups experience a consistent P.01 or better grade of service, and other appropriate, relevant industry-accepted quality, reliability and availability standards. The Parties will use their best efforts to complete and agree on such plan within 180 days following execution of this Agreement.

BST has failed to comply with this provision nor has it made a "good faith effort" to resolve the redundant trunking problem. Continual inquiries from KMC have resulted only in additional delays on BST's part.

30. BST's refusal to provide redundant trunking to KMC's Melbourne facilities significantly impeded KMC's ability to conduct business. Therefore, KMC had no choice but to pay for construction which was BST's obligation, while reserving its right to bring this dispute to the Commission. BST should be required to refund this unauthorized charge to KMC.

VI. Request for Expedited Relief and Hearing.

31. The conduct of BST, described above, occurs in the marketplace everyday. Every day that such conduct is permitted to continue is a day that KMC's ability to compete in the local market is hampered and its revenues and reputation damaged. Therefore, KMC requests that the Commission process this Complaint on an expedited basis. KMC suggests that three, rather than all five, Commissioners be assigned to this case in order to expedite the processing time. KMC will devote all the resources necessary to comply with all expedited time frames.

VI. Relief Sought

WHEREFORE, KMC hereby requests that the Commission provide the following relief in response to this Complaint:

- (1) Set this Complaint for hearing on an expedited schedule;
- (2) Declare that BST is in breach of the Interconnection Agreements;

- (3) Order BST to comply with the Interconnection Agreements;
- (4) Order BST to cease and desist from further disruptions and delays in transitioning customers to KMC;
- (5) Order BST to cease and desist from further service interruptions of current KMC customers;
- (6) Require BST to adhere to the time frames in the Services Interval Guide;
- (7) Require BST to revise and improve the process it uses to implement the Services Interval Guide and to conduct root cause analyses of the problems detailed in this Complaint;
- (8) If the problems outlined in this Complaint persist, require BST to assume responsibility for the problems and contact the affected customers to advise them that their service problems are due to the conduct of BST;
- (9) Require BST to issue KMC a service credit for the numerous service interruptions experienced by KMC customers;
- (10) Require BST to credit KMC with \$27,166.58, plus interest, which KMC paid for trunking, the cost of which is BST's obligation;
- (11) Order such other relief as it deems appropriate.

Vicki Gordon Kaufman

Vicki Gordon Kaufman

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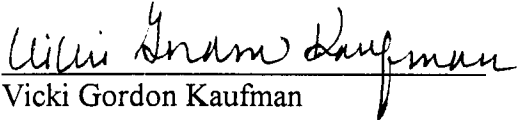
Attorneys for KMC Telecom Inc. and KMC
Telecom II, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Complaint of KMC Telecom Inc. and KMC Telecom II, Inc. Against BellSouth Telecommunications, Inc. and Request for Expedited Relief has been furnished by (*) hand delivery or U.S. Mail to the following this 18th day of October, 1999:

(*) Beth Keating
Florida Public Service Commission
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Tallahassee, Florida 32399

(*) Nancy B. White
c/o Nancy Sims
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Vicki Gordon Kaufman