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Blanca S. Bayo, Director
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ORIGINAL

Re: Docket No.991619-TP

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and 15 copies of:

- KMC Telecom's Motion to Include Issues.

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

Yours truly,

Vicki Gordon Kaufman

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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. 991619-TP
Filed: February 14, 2000

KMC's Motion to Include Issues

KMC Telecom Inc. and KMC Telecom II, Inc. (KMC), pursuant to rule 28-106.204, Florida Administrative Code, file this Motion to Include Issues in this proceeding. As grounds therefor, KMC states:

1. On October 18, 1999, KMC filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) alleging numerous breaches of the parties' interconnection agreement as well as anticompetitive behavior on the part of BellSouth. An integral part of KMC's complaint concerns the way in which BellSouth's activities in the small, close-knit community of Daytona Beach have acted as a bar to local entry. Direct testimony in this case is due on March 10, 2000. The hearing is set for May 12, 2000.

2. An issue identification meeting was held between the parties on February 9, 2000. At that meeting, Staff indicated that it did not believe that four of the issues proposed by KMC were appropriate for hearing and suggested that KMC file a motion addressing the propriety of the issues..

3. The issues to which Staff objects and which KMC asserts entirely appropriate are:

- Have BellSouth's actions discussed in Issues 1-4¹ above resulted in negative publicity

¹ Issues 1-4 relate to the transition of customers from BellSouth to KMC, the "hot cut" process, coordination for UNE cutovers and local number portability. KMC contends that BellSouth's actions in these areas have resulted in poor service quality and have been

regarding KMC in the Daytona Beach community?

- Has KMC's reputation for quality service been damaged due to BellSouth's actions?
- If the Commission determines that BellSouth is responsible for service outages to KMC customers, should BellSouth be required to advise affected customers that their service outage problems were the responsibility of BellSouth not KMC?²
- If the Commission determines that BellSouth is responsible for service outages to KMC customers, should BellSouth be required to take other actions to mitigate service problems which affected KMC customers?³

3. It was unclear to KMC at the meeting if Staff does not believe that the Commission has the authority to address these issues or if they thought such issues were not appropriate in a complaint proceeding. As to the authority issue, the Commission clearly has jurisdiction to address anticompetitive behavior (*see*, section 364.01(4)(g), Florida Statutes, which empowers the Commission to ensure that all telecommunications companies are treated fairly, by preventing anti-competitive behavior), violations of the Telecommunications Act and violations of parties' interconnection agreements. All of the above issues go to BellSouth's anticompetitive actions and measures which should be taken to remedy such actions so local competition can succeed.

4. As to whether such issues are appropriate in a complaint proceeding, KMC asserts that they are the very type of issues necessary to resolve this complaint. The allegations in KMC's

anticompetitive.

²BellSouth does not object to the inclusion of this issue as worded.

³BellSouth does not object to the inclusion of this issue as worded.

complaint⁴ depict a series of actions taken by BellSouth which have resulted in KMC being portrayed in a very negative way in the small community of Daytona Beach in terms of the type and quality of service it provides to its customers. When customers have service problems, they tell their friends and associates. When customers return to BellSouth with the impression that the problems they have experienced are due to KMC, they tell their friends and associates that also. This type of conduct is the very thing which hampers entry into the local market and delays the benefits of local competition.

4. The issues listed above go to the heart of KMC's complaints, the problems it has had with BellSouth in Daytona Beach and the way those problems have impacted the local market and the advent of local competition. They are not only appropriate for consideration in this case, but critical to it.

⁴ Of course, these factual matters will be addressed in detail in KMC's testimony.

WHEREFORE, KMC requests that the above issues be included in this docket for the Commission's consideration.

Vicki Gordon Kaufman

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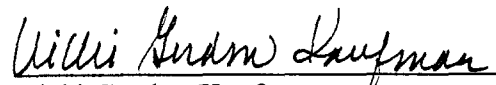
Attorneys for KMC Telecom Inc. and KMC
Telecom II, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Include Issues has been furnished by (*) hand delivery or U.S. Mail this 14th of February, 2000 to the following parties of record:

(*) Donna Clemons
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Gunter Building, Room 370
Tallahassee, Florida 32399

(*) Michael Goggin (also served by fax)
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301


Vicki Gordon Kaufman