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RECORDS AND
REPORTING

February 21, 2000

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 991619-TP (KMC Complaint)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to KMC Telecom, Inc. and KMC Telecom II, Inc.'s Motion to Include Issues, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Michael P. Goggin
Michael P. Goggin

- AFA _____
- APP _____
- CAF _____
- CMU 1
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- LEG 1
- MAS 2
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cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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CERTIFICATE OF SERVICE
Docket No. 991619-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

(*) Facsimile and U.S. Mail this 21st day of February, 2000 to the following:

Donna Clemons (*)
Staff Counsel
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Tallahassee, Florida 32399-0850

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KMC Telecom II, Inc.
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Michael P. Goggin

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of KMC Telecom Inc. and KMC)	Docket No. 991619-TP
Telecom II, Inc. Against BellSouth)	
Telecommunications, Inc. for)	
Breach of Interconnection Agreement and)	
Request for Expedited Relief)	
<hr/>		Filed: February 21, 2000

**Response of BellSouth Telecommunications, Inc. to
KMC's Motion to Include Issues**

BellSouth Telecommunications, Inc. ("BellSouth") hereby responds to KMC's Motion to Include Issues (the "Motion"). At the Issues Identification Meeting in this matter on February 9, 2000, staff objected to the inclusion of four issues proposed by KMC as issues to be decided in this matter. Each of the four issues would more appropriately be taken up in a civil court proceeding than by this Commission. Accordingly, BellSouth agrees with staff that they should not be included in this matter.

1. The first two issues to in dispute, renumbered as Issues 10 and 11 in the Order Establishing Procedure in this matter, would have the Commission determine whether the alleged conduct of BellSouth resulted in "negative publicity" for KMC or "damaged" KMC's reputation for quality. While each of these factual questions might be critical to determine whether, in a civil trial, the plaintiff would be entitled to damages (and, if so, in what amount), they need not be decided for purposes of this administrative proceeding. KMC's claims in this matter essentially boil down to three theories. KMC alleges that BellSouth violated its interconnection agreement, that BellSouth violated the Telecommunications Act, and that BellSouth has engaged in anticompetitive

conduct. It is not necessary to make findings of fact regarding the nature and extent of any “damage” to KMC to decide KMC’s claims.

2. Similarly, Issues 12 and 13 ask the Commission to order BellSouth to contact KMC customers to tell them that their service outages were BellSouth’s fault (not KMC’s) and to require BellSouth to “take other actions to mitigate service problems which affected KMC customers.”¹ BellSouth agrees with the Staff that these issues also are inappropriate to include in this administrative proceeding. Such remedies would be inconsistent with the parties’ interconnection agreement. Moreover, such remedies would be extraordinary for the Commission to impose. BellSouth has no contractual relationship with KMC customers, nor are any such customers a party to this matter. For the Commission to order BellSouth to contact KMC customers directly and “take other actions to mitigate” their alleged service problems (when none of them has even asked for such a remedy) would be inappropriate.

For the foregoing reasons, BellSouth supports the Staff’s recommendation that Issues 10-13 be excluded.

¹ Although, as KMC correctly notes, BellSouth agreed to the wording of Issues 12 and 13, this does not mean that BellSouth does not object to their inclusion in this matter. We do so object.

Respectfully submitted this 21st day of February, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White

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