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March 3, 2000

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

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00 MAR -3 PM 4:41
RECORDS AND REPORTING

000 282-TP

Re: Complaint of KMC Telecom, Inc. for Enforcement of its Interconnection Agreement with BellSouth Telecommunications, Inc. and Request for Relief.

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of KMC Telecom, Inc. ("KMC") are the following documents:

1. Original and fifteen copies of the Complaint of KMC Telecom, Inc.; and
2. A disk in Word Perfect 6.0 containing a copy of the Complaint.

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,



Kenneth A. Hoffman

KAH/rl
Enclosures
cc: All Parties of Record
Trib.3

FILED
PUBLIC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
02883 MAR-38
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of KMC Telecom, Inc. for)
Enforcement of its Interconnection)
Agreement with BellSouth Telecommu-)
nications, Inc. and Request for Relief.)
_____)

Docket No. 0002882-TP

Filed: March 3, 2000

COMPLAINT OF KMC TELECOM, INC.

KMC TELECOM, INC., ("KMC"), by and through its undersigned counsel, and pursuant to Sections 120.80(13)(d), 364.01 and 364.162, Florida Statutes, 47 U.S.C. §252(e)(1) and Rule 28-106.201, Florida Administrative Code, hereby files this Complaint against BellSouth Telecommunications, Inc. ("BellSouth") for breach of the terms of the Interconnection Agreement dated February 24, 1997, by and between BellSouth and KMC (the "KMC Agreement"). As grounds for this Complaint and demand for relief, KMC states as follows:

I. PROCEDURAL BACKGROUND

1. This is an administrative action to enforce the terms of the KMC Agreement, approved by this Commission in Order No. PSC-97-0857-FOF-TP, issued on July 16, 1997, in Docket No. 970454-TP.

II. PARTIES TO RECEIVE SERVICE

2. Correspondence regarding this complaint should be sent to the parties as follows:

To KMC:

John McLaughlin
KMC Telecom, Inc.
3025 Breckinridge Boulevard
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Duluth, GA 30096
(770) 931-5260 (Telephone)
(770) 638-6796 (Telecopier)

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DOCUMENT NUMBER-DATE

02883 MAR-30

FPSC-RECORDS/REPORTING

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Washington, DC 20007
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To BellSouth (unless otherwise directed by BellSouth):

CLEC Account Team
3535 Colonmade Parkway Floor
600 North 19th Street
Birmingham, Alabama 35203

General Attorney
Customer Operations Unit
BellSouth Telecommunications, Inc.
675 West Peachtree Street
Suite 4300
Atlanta, GA 30375

III. JURISDICTION

3. The exact name and address of the complainant is:

KMC Telecom, Inc.
1545 Route 206, Suite 300
Bedminister, New Jersey 07921

4. KMC is an Alternative Local Exchange Telephone Company ("ALEC"). BellSouth is an Incumbent Local Exchange Provider ("ILEC"). Both KMC and BellSouth are authorized to provide local exchange services in the State of Florida.

5. 47 U.S.C. §251(a) of the Telecommunications Act of 1996 (the "Act"), obligates all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."

6. Pursuant to the terms of the Agreement, KMC and BellSouth have interconnected their networks to enable an end-user customer subscribing to KMC's local exchange service to place calls to end-user customers subscribing to BellSouth's local exchange service, and vice versa.

7. 47 U.S.C. §251(b)(5) obligates BellSouth and KMC, as local exchange carriers, "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." The Act does not prohibit local exchange carriers from establishing reciprocal compensation arrangements for calls to Internet Service Providers.

8. Pursuant to 47 U.S.C. §252(i), KMC adopted the previously negotiated and approved interconnection agreement by and between BellSouth and MFS Intelenet of Georgia, Inc. (the "MFS Agreement"). KMC and BellSouth adapted the MFS Agreement into a regional agreement governing all of KMC's operations in BellSouth's territory (the "KMC Agreement"). The KMC Agreement was executed on February 24, 1997, and was filed with the Florida Public Service Commission ("Commission") on April 11, 1997. The Commission approved the Agreement on July 16, 1997. A copy of the KMC Agreement is attached as Exhibit A and incorporated herein by reference.

9. The terms of the KMC Agreement specifically provide for the right of either party to petition the Commission to resolve any conflict "if any dispute arises as to the interpretation of this Agreement or as to the proper implementation of this Agreement..."¹

10. The Commission has jurisdiction to consider and rule on this Complaint pursuant to Sections §120.80(13)(d), 364.01, 364.162, and 364.285, Florida Statutes.

11. The authority of the Commission to hear such disputes was explicitly recognized by the Eighth Circuit Court of Appeals in *Iowa Utilities Board*.²

¹Agreement, Section 36.8 at 72; *see also* Section 30.3 at 65.

²*See Iowa Utilities Board v. F.C.C.*, 120 F.3d 753 (8th Cir. 1997), *rev'd in part and remanded on other grounds sub nom, AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721

12. Moreover, the FCC addressed the jurisdiction of the state commissions in its February 26, 1999 Declaratory Ruling, stating that "in the absence of a federal rule, state commissions have the authority under section 252 of the Act to determine inter-carrier compensation for ISP-bound traffic."³ More particularly, in the Notice of Proposed Rulemaking, the FCC specifically noted that: "Until adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for this traffic."⁴

IV. TERMS OF THE AGREEMENT

13. Consistent with the Act, as interpreted by the FCC in the *Declaratory Ruling*, the KMC Agreement provides under Section 5.2 that "[t]he Parties shall reciprocally terminate Local/intraLATA Traffic and Information Services Traffic, originating on each other's networks."⁵

In defining "local traffic," the KMC Agreement provides:

"Local Traffic" refers to calls between two or more telephone Exchange service users where both Telephone Exchange Services bear NPA-NXX designations associated with the same local calling area of the incumbent LEC or other authorized area..."

Further, Section 5.8 states that "[t]he Parties shall compensate each other for the transport and

(1999). The Eighth Circuit stated that "[w]e believe that the state commission's plenary authority to accept or reject [interconnection agreements] necessarily carries with it the authority to enforce the provisions of agreements that the state commissions have approved." *Id.* at 804. That portion of the Eighth Circuit's opinion was vacated by the Supreme Court purely on ripeness grounds. *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999).

³FCC 99-38, ¶26 n.87, CC Docket No. 96-98, *In the Matter of Implementation of Local Competition Provisions of the Telecommunications Act of 1996*; CC Docket No. 99-68, *In the Matter of Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68 ("*Declaratory Ruling*").

⁴*Id.* At ¶28.

⁵Agreement, Section 5.2 at 21.

termination of "Local Traffic..."⁶ In Exhibit 8 of the KMC Agreement, the parties agreed to the rate to be paid for terminating local traffic.

14. Within the meaning of the KMC Agreement, traffic terminating to enhanced service providers and Internet Service Providers (collectively "ISPs") is local traffic.

15. At the same time, Section 36.9 specifically makes the KMC Agreement subject to the Act, rules and regulations promulgated pursuant to the Act, any other applicable federal law, and the rules of the Commission.⁷

16. Finally, Section 36.6 of the KMC Agreement, termed "Entire Agreement", states as follows:

This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter of the Agreement and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understanding, agreements, or warranties, expressed or implied, have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

17. These provisions establish the binding obligations of KMC and BellSouth with respect to reciprocal compensation for the delivery of local traffic between them. Under them, reciprocal compensation is owed for the transport and termination of all local calls, regardless of the identity of the terminating end-user. Moreover, the terms of the KMC Agreement are subject to decisions of this Commission (or the FCC). If a representation or understanding is not contained within the four corners of the KMC Agreement, it is ineffective.

⁶*Id.*, Section 5.8.2 at 25; *see also Id.*, Section 1.59 at 12, and Section 5.8.1 at 24-25.

⁷*Id.*, Section 36.9 at 72.

V. STANDING

18. KMC's substantial interest in this Complaint is the enforcement of its Agreement with BellSouth with respect to the provision of local exchange telecommunications services throughout the State of Florida.

19. Accordingly, KMC has standing to bring this Complaint for hearing before this Commission pursuant to Section 120.569(1), Florida Statutes.

VI. ALLEGATIONS OF FACT

The Nature of ISP Traffic

20. Both KMC and BellSouth provide tariffed local exchange services over their respective networks to end-user customers, including certain business customers operating as ISPs. ISPs provide information obtained from numerous sources, including sources accessed through the Internet and through databases. Typically, an ISP's customer connects to an ISP by means of a local phone call, using telephone exchange service. The interconnection terms of the KMC Agreement permit subscribers to BellSouth's local exchange service to place calls to ISPs located on KMC's network, just as they may with any other local exchange end-user customer. Likewise, subscribers to KMC's local exchange service may place calls to ISPs served by BellSouth.

21. The reciprocal compensation provisions of the Agreement clearly require the parties to compensate each other for the termination of all local traffic. There is no exception in the KMC Agreement for calls terminating to ISPs.

22. Pursuant to the KMC Agreement, KMC and BellSouth interconnected their networks and began exchanging traffic, including ISP traffic.

23. Since the execution of the KMC Agreement, and the interconnection of their

respective networks, KMC has invoiced BellSouth the total sum of \$2,531,252. That sum represents reciprocal compensation owed to KMC for transporting and terminating traffic from BellSouth customers to KMC customers in Florida and late charges for delinquent amounts and non-payment of amounts due.

24. Against this amount, BellSouth has paid only the amount of \$259,122. Thus, the total sum outstanding as of January 1, 2000, was \$2,272,130. The only reason given by BellSouth for its refusal to pay the balance invoiced is that the charges include ISP traffic and late charges.

25. BellSouth's refusal to pay the balance of the amounts invoiced for reciprocal compensation is a breach of the KMC Agreement.

26. BellSouth's breach of the KMC Agreement by refusing to pay reciprocal compensation for ISP calls is in contravention of prior decisions of this Commission addressing substantially identical disputes between BellSouth and other competitive carriers⁸, and decisions of other regulatory agencies⁹, the FCC¹⁰, and the courts¹¹ addressing such disputes.

⁸See Order Nos. PSC-98-1216-FOF-TP, issued on September 15, 1998, in Docket Nos. 971478-TP, 980184-TP, 980495-TP and 980499-TP, and PSC-99-0658-FOF-TP, issued on April 6, 1999, in Docket No. 981008-TP.

⁹See *In re: Emergency Petitions of ICG Telecom Group, Inc. and ITC DeltaCom Communications, Inc. for a Declaratory Ruling*, Alabama P.S.C., Docket No. 22619 (March 4, 1999);

In the Matter of the Petition of Birch Telecom of Missouri, Inc. For Arbitration of the Rates, Terms, Conditions, and Related Arrangements for Interconnection with Southwestern Bell Telephone Company, Order Clarifying Arbitration Order, Case No. TO-98-278 (Mo. P.S.C. April 6, 1999) (effectively suspending SBC's payment obligation pending the FCC NPRM without altering its conclusion that some reciprocal compensation is owed);

In Re: Petition of Pac-West Telecomm, Inc. for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Nevada Bell,

"Order Adopting Revised Arbitration Decision," Nevada P.U.C., Docket Nos. 98-10015 and 99-1007 (April 12, 1999);

Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation, Order Instituting Proceeding to Reexamine Reciprocal Compensation, New York P.S.C., Case No. 99-C-0529 (April 15, 1999);

Electric Lightwave, Inc. v. U.S. WEST Communications, Inc., Oregon P.U.C., Order No. 99-285 (April 26, 1999);

In the Matter of the Complaints of ICG Telecom Group, Inc., MCImetro Access Transmission Services, Inc., and Time Warner Telecom v. Ameritech Ohio, Ohio P.U.C., Case No. 97-1557-TP-CSS et al (May 5, 1999);

Petition of GTE Hawaiian Telephone Company, Inc. for a Declaratory Order that Traffic to Internet Service Providers is Interstate and Not Subject to Transport and Termination Compensation, Hawaii P.U.C., Docket No. 99-0067, Decision and Order No. 16975 (May 6, 1999);

Application of Global NAPs South, Inc. for the Arbitration of Unresolved Issues from the Interconnection Negotiations with Bell Atlantic-Delaware, Inc., Delaware P.S.C., Docket No. 98-540, Order No. 5092 (May 11, 1999);

WorldCom, Inc. v. GTE Northwest, Inc., Third Supplemental Order Granting WorldCom's Complaint, Granting Staff's Penalty Proposal; and Denying GTE's Counterclaim, Washington U.T.C., Docket No. UT-980338 (May 12, 1999); and

Complaint of MCI WorldCom, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996, Order, Massachusetts D.T.E. 97-116-C (May 19, 1999) (vacating earlier decision but reserving ruling and acknowledging that some form of reciprocal compensation for ISP-bound traffic would be appropriate).

¹⁰FCC 99-38, *supra*; *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682 (1983); *Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, Order, 3 FCC Rcd 2631 (1988); *Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, Order, 2 FCC Rcd 4305 (1987); *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998); *Federal-State Joint Board*

27. Critically, the Commission already has interpreted the identical provisions of the MFS Agreement that were adopted by KMC and are reflected in the KMC Agreement. In Order No. PSC-98-1216-FOF-TP, entered in Docket No. 971478-TP, the Commission ruled that WorldCom Technologies, Inc., successor-in-interest to MFS Intelenet, and BellSouth, are obligated to pay reciprocal compensation for traffic delivered to ISPs under the terms of the MFS Agreement.

VII. REQUEST FOR RELIEF

WHEREFORE, KMC requests that the Commission:

(1) determine that the provisions of the KMC Agreement concerning local traffic include telephone exchange service calls that terminate to ISPs;

(2) determine that BellSouth has breached the KMC Agreement by failing to pay KMC reciprocal compensation for the transport and termination of telephone exchange service local traffic originated by BellSouth's end-user customers and sent to KMC for termination with ISPs that are KMC's end-user customers;

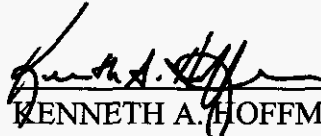
(3) order BellSouth to pay KMC all sums owing now and in the future for terminating local traffic, including ISP traffic, under the reciprocal compensation provisions of the KMC Agreement together with interest thereon; and

on Universal Service, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501 (1998).

¹¹*Illinois Bell Telephone Company d/b/a Ameritech Illinois v. WorldCom Technologies, Inc.*, 179 F.3d 566, 574 (7th Cir. 1999); *US West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1123 (9th Cir. Oct. 8, 1999); *BellSouth Telecommunications, Inc. v. ITC DeltaCom Communications, Inc., et al.*, Civil Action Nos. 99-D-287-N (M.D. Ala. Nov. 15, 1999); *Southwestern Bell Telephone Co. v. Brooks Fiber Communications of Oklahoma, Inc., et al.*, Order, Case No. 98-CV-468-K(J) (N.D. Ok. Oct. 1, 1999); *Michigan Bell Telephone Co., d/b/a Ameritech Michigan, Inc. v. MFS Intelenet of Michigan, Inc.*, No. 5:98 CV 18, slip op. (W.D. Mich. Aug. 2, 1999).

- (4) grant such other relief as the Commission deems appropriate.

Respectfully submitted,



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Counsel for KMC Telecom, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 3rd day of March, 2000:

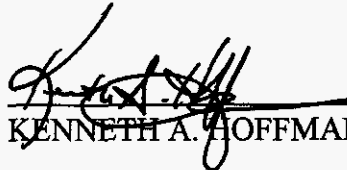
Nancy White, Esq.

c/o Nancy H. Sims

BellSouth Telecommunications, Inc.

150 S. Monroe Street, Suite 400

Tallahassee, FL 32301



KENNETH A. HOFFMAN, ESQ.

2/24/97

**Interconnection Agreement
Under Sections 251 and 252 of the
Telecommunications Act of 1996**

DATED FEBRUARY 24, 1997

BY AND BETWEEN

**BELLSOUTH TELECOMMUNICATIONS, INC.
and
KMC TELECOM INC.**

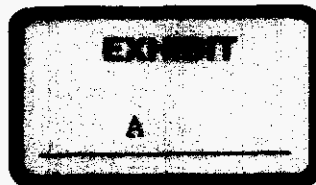


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**KMC Telecom Inc. & BellSouth Telecommunications, Inc.
Interconnection Agreement
Under Sections 251 and 252 of the Telecommunications Act of 1996**

This Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 ("Agreement"), is effective as of the 24th day of February 1997 (the "Effective Date"), by and between BellSouth Telecommunications, Inc., ("BST") a Georgia Corporation, 675 West Peachtree Street, Atlanta, Georgia 30375, and KMC Telecom Inc., ("KMC") a Delaware corporation, with offices located at 1545 Route 206, Suite 300, Bedminister, New Jersey 07921.

WHEREAS, the Parties want to interconnect their networks within the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective Customers.

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will interconnect their networks and provide other services as required by the Act and additional services as set forth herein.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, KMC and BST hereby agree as follows:

1.0 DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below in this Section 1.0. For convenience of reference only, the definitions of certain terms are set forth on Exhibit 1.

- 1.1 "Act" means the Communications Act of 1934 (47 U.S.C. 153(R)), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.**
- 1.2 "Access Service Request" (ASR) means an industry standard form used by the Parties to add, establish, change or disconnect trunks for the purpose of Interconnection.**

KMC Telecom Inc. & BellSouth Telecommunications, Inc.
Interconnection Agreement
Under Sections 251 and 252 of the Telecommunications Act of 1996

- 1.3 "Asymmetrical Digital Subscriber Line" or "ADSL" is a transmission technology which transmits an asymmetrical digital signal using one of a variety of line codes.**
- 1.4 "Affiliate" is As Defined in the Act.**
- 1.5 "As Defined in the Act" means as specifically defined by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.**
- 1.6 "As Described in the Act" means as described in or required by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.**
- 1.7 "Automatic Number Identification" or "ANI" is a Feature Group D signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling party.**
- 1.8 "BLV/BLVI Traffic" or "BLV/BLVI Call" refers to an operator call in which the end user inquires as to the busy status of, or requests an interruption of a call on, a Telephone Exchange Service line.**
- 1.9 "Calling Party Number" or "CPN" is a Common Channel Interoffice Signaling parameter which refers to the number transmitted through the network identifying the calling party.**
- 1.10 "Central Office Switch", "Central Office" or "CO" means a switching entity within the public-switched telecommunications network, including but not limited to:**
- a) "End Office Switches" which are Class 5 switches from which end user Telephone Exchange Services are directly connected and offered.**

KMC Telecom Inc. & BellSouth Telecommunications, Inc.
Interconnection Agreement
Under Sections 251 and 252 of the Telecommunications Act of 1996

b) **"Tandem Office Switches"** which are Class 4 switches which are used to connect and switch trunk circuits between and among Central Office Switches.

Central Office Switches may be employed as combination End Office/Tandem Office switches (combination Class 5/Class 4).

- 1.11 **"CLASS Features"** mean certain CCS-based features available to end users. Class features include, but are not necessarily limited to: Automatic Call Back; Call Trace; Caller Identification and related blocking features; Distinctive Ringing/Call Waiting; Selective Call Forward; Selective Call Rejection.
- 1.12 **"Collocation" or "Collocation Arrangement"** means an arrangement whereby one Party's (the "Collocating Party") facilities are terminated in its equipment necessary for interconnection or for access to Network Elements on an unbundled basis which has been installed and maintained at the premises of a second Party (the "Housing Party"). For purposes of Collocation, the "premises" of a Housing Party is any BST central office, serving wire center and tandem office, as well as all buildings or similar structures owned or leased by BST that house BST network facilities, including any BST structures that house BST network facilities on public rights-of-way, such as vaults containing loop concentrators or similar structures, to the extent such collocation is technically feasible and space is available. Collocation may be "physical" or "virtual". In "Physical Collocation," the Collocating Party installs and maintains its own equipment in the Housing Party's premises. In "Virtual Collocation," the Housing Party installs and maintains the Collocating Party's equipment in the Housing Party's premises.
- 1.13 **"Commission"** means any state administrative agency to which the United States Congress or any state legislative body has delegated any authority to supervise or regulate the operations of Local Exchange Carriers pursuant to the Act or state constitution or statute, such as a Public Utilities Commission or Public Service Commission.

KMC Telecom Inc. & BellSouth Telecommunications, Inc.
Interconnection Agreement
Under Sections 251 and 252 of the Telecommunications Act of 1996

- 1.14 "Common Channel Signaling" or "CCS" means the signaling system, developed for use between switching systems with stored-program control, in which all of the signaling information for one or more groups of trunks is transmitted over a dedicated high-speed data link rather than on a per-trunk basis and, unless otherwise agreed by the Parties, the CCS used by the Parties shall be SS7.**
- 1.15 "Cross Connection" is an intra-wire center channel connecting separate pieces of telecommunications equipment including a channel between separate Collocation facilities.**
- 1.16 "Customer" means a third-party residence or business that subscribes to Telecommunications Services provided by either of the Parties.**
- 1.17 "DID" means direct inward dialing.**
- 1.18 "Dialing Parity" is As Defined in the Act. As used in this Agreement, Dialing Parity refers to both Local Dialing Parity and Toll Dialing Parity.**
- 1.19 "Digital Loop Carrier" is a subscriber loop carrier system which integrates within the switch at a DS1 level that is twenty-four (24) local Loop transmission paths combined into a 1.544 Mbps digital signal.**
- 1.20 "Digital Signed Level" means one of several transmission rates in the time-division multiplex hierarchy.**
- 1.21 "Digital Signal Level 0" or "DS0" is the 64 Kbps zero-level signal in the time-division multiplex hierarchy.**
- 1.22 "Digital Signal Level 1" or "DS1" is the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing.**

KMC Telecom Inc. & BellSouth Telecommunications, Inc.
Interconnection Agreement
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- 1.23 **"Digital Signal Level 3" or "DS3"** is the 44.736 Mbps third-level in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.
- 1.24 **"DSX panel"** is a cross-connect bay/panel used for the termination of equipment and facilities operating at digital rates.
- 1.25 **"Exchange Access"** is As Defined in the Act.
- 1.26 **"Electronic File Transfer"** is any system/process which utilizes an electronic format and protocol to send/receive data files.
- 1.27 **"Exchange Message Record" or "EMR"** is the standard used for exchange of telecommunications message information among Local Exchange Carriers for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a Bellcore document which defines industry standards for exchange message records.
- 1.28 **"FCC"** is the Federal Communications Commission.
- 1.29 **"Fiber-Meet"** means an Interconnection architecture method whereby the Parties physically Interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at a mutually agreed upon location.
- 1.30 **"HDSL" or "High-Bit Rate Digital Subscriber Line"** is a transmission technology which transmits up to a DS1-level signal, using any one of the following line codes: 2 Binary /1 Quaternary ("2B1Q"), Carrierless AM/PM, Discrete Multitone ("DMT"), or 3 Binary/1 Octet ("3B10").
- 1.31 **"Information Service Traffic" or "Information Service Call"** is a call which originates on a Telephone Exchange Service and which is addressed to an information service provided over a LEC information services platform (e.g., 976), where the telephone number of the Telephone Exchange Service and the telephone

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number of the information service are associated with the same LATA.

- 1.32 "Interconnection"** means the connection of separate pieces of equipment, transmission facilities, etc., within, between or among networks. The architecture of interconnection may include several methods including, but not limited to Collocation arrangements and mid-fiber meet arrangements.
- 1.33 "Interexchange Carrier" or "IXC"** is a provider of stand-alone interexchange telecommunications services.
- 1.34 "Interim Telecommunications Number Portability" or "INP"** is the transparent delivery of Local Telephone Number Portability ("LTNP") capabilities, from a customer standpoint in terms of call completion, and from a carrier standpoint in terms of compensation, through the use of existing and available call routing, forwarding, and addressing capabilities.
- 1.35 "InterLATA"** is As Defined in the Act.
- 1.36 "Integrated Services Digital Network" or "ISDN"** is a switched network service that provides end-to-end digital connectivity for the simultaneous transmission of voice and data. Basic Rate Interface-ISDN (BRI-ISDN) provides for digital transmission of two 64 Kbps bearer channels and one 16 Kbps data channel (2B + D). Primary Rate Interface-ISDN (PRI-ISDN) provides for digital transmission of twenty-three (23) 64 Kbps bearer channels and one 64 Kbps data channel (23 B+ D).
- 1.37 "Line Side"** refers to an end office switch connection that has been programmed to treat the circuit as a local line connected to an ordinary telephone station set. Line side connections offer only those transmission and signaling features appropriate for a connection between an end office and an ordinary telephone station set.

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- 1.38 "Local Access and Transport Area" or "LATA" is As Defined in the Act.**
- 1.39 "Local Dialing Parity" means the ability of Telephone Exchange Service Customers of one LEC to place local calls to Telephone Exchange Service Customers of another LEC, without the use of any access code and with no unreasonable dialing delay. "Toll Dialing Parity" means the ability of Telephone Exchange Service Customers of a LEC to have their toll calls (inter or intraLATA) routed to a toll carrier (intraLATA or interLATA) of their selection without dialing access codes or additional digits and with no unreasonable dialing delay.**
- 1.40 "Local Exchange Carrier" or "LEC" means any carrier that provides facility-based Telephone Exchange Services utilizing a switch it owns or substantially controls in conjunction with unique central office codes assigned directly to that carrier; this includes the Parties to this Agreement.**
- 1.41 "Local Traffic" refers to calls between two or more Telephone Exchange service users where both Telephone Exchange Services bear NPA-NXX designations associated with the same local calling area of the incumbent LEC or other authorized area (e.g., Extended Area Service Zones in adjacent local calling areas). Local traffic includes the traffic types that have been traditionally referred to as "local calling" and as "extended area service (EAS)." All other traffic that originates and terminates between end users within the LATA is toll traffic. In no event shall the Local Traffic area for purposes of local call termination billing between the parties be decreased.**
- 1.42 "Local Loop Transmission" or "Loop" is a network element of a Telephone Exchange Service; for purposes of general illustration, the "Loop" is the transmission facility (or channel or group of channels on such facility) which extends from a Main Distribution Frame, DSX-panel, or functionally comparable piece of equipment in a BST end office wire center, to a demarcation or connector block in/at a customer's premises. Loops fall into the**

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following categories:

- a) **"2-wire Analog Voice Grade Loops" will support analog transmission of 300-3000 Hz, repeat loop start, loop reverse battery, or ground start seizure and disconnect in one direction (toward the end office switch), and repeat ringing in the other direction (toward the end user). This Loop is commonly used for local dial tone service.**
- b) **"4-wire Analog Voice Grade Loops" will support the transmission of voice grade signals using separate transmit and receive paths and terminate in a 4-wire electrical interface.**
- c) **"2-wire ISDN Digital Grade Loops" will support digital transmission of two 64 Kbps bearer channels and one 16 Kbps data channel. This is a 2B+D basic rate interface Integrated Services Digital Network (BRI-ISDN) type of loop which will meet national ISDN standards.**
- d) **"2-Wire ADSL-Compatible Loop" is a transmission path which facilitates the transmission of up to a 6 Mbps digital signal downstream (toward the Customer) and up to a 640 Kpbs digital signal upstream (away from the Customer) while simultaneously carrying an analog voice signal. An ADSL-Compatible Loop is provided over a 2-Wire nonloaded twisted copper pair provisioned using revised resistance design guidelines and meeting ANSI Standard T1.413-1995-007R2. An ADSL Loop terminates in a 2-wire electrical interface at the customer premises and at the BST frame.**
- e) **"2-Wire HDSL-Compatible Loop" is a transmission path which facilitates the transmission of a 768 Kbps digital signal over a 2-Wire non-loaded twisted copper pair meeting the specifications in ANSI T1 E1 Committee Technical Report Number 28.**

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f) "4-Wire HDSL-Compatible Loop" is a transmission path which facilitates the transmission of a 1.544 Mbps digital signal over two 2-Wire non-loaded twisted copper pairs meeting the specifications in ANSI T1 E1 Committee Technical Report Number 28.

1.43 "Losses" means any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorney fees).

1.44 "Main Distribution Frame" or "MDF" is the primary point at which outside plant facilities terminate within a wire center, for interconnection to other telecommunications facilities within the wire center.

1.45 "MECAB" refers to the *Multiple Exchange Carrier Access Billing (MECAB)* document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Bellcore as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an access service provided by two or more LECs, or by one LEC in two or more states within a single LATA.

1.46 "MECOD" refers to the *Multiple Exchange Carriers Ordering and Design (MECOD) Guidelines for Access Services - Industry Support Interface*, a document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by Bellcore as Special Report SR STS-002643, establishes methods for processing orders for access service which is to be provided by two or more LECs.

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- 1.47 "Meet Point Billing" or "MPB" refers to the billing arrangement for the interconnection of facilities between two or more LECs for the provision of Exchange Access to an interexchange carrier or other third party.**
- 1.48 "Multiple Bill/Single Tariff" as defined by the industry's MECAB document, means the meet-point billing method where each LEC prepares and renders its own meet point bill in accordance with its own tariff for the portion of the jointly-provided Switched Access Service which the LEC provides. Sometimes erroneously referred to as "Multiple Bill/Multiple Tariff" method.**
- 1.49 "Network Element" is as defined in the Act.**
- 1.50 "North American Numbering Plan" or "NANP" means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico and certain Caribbean islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code), followed by a 3-digit NXX code and 4-digit line number.**
- 1.51 "Numbering Plan Area" or "NPA" is also sometimes referred to as an area code. This is the three digit indicator which is defined by the "A", "B", and "C" digits of each 10-digit telephone number within the North American Numbering Plan ("NANP"). Each NPA contains 800 possible NXX Codes. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs". A "Geographic NPA" is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A "Non-Geographic NPA," also known as a "Service Access Code" or "SAC Code" is typically associated with a specialized telecommunications service which may be provided across multiple geographic NPA areas; 800, 900, 700, and 888 are examples of Non-Geographic NPAs.**
- 1.52 "Number Portability" or "LTNP" is as defined in the Act. LTNP provides the technical ability to enable an end user customer to**

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utilize its telephone number in conjunction with any Telephone Exchange Service provided by any Local Exchange Carrier operating within the geographic number plan area with which the customer's telephone number(s) is associated, regardless of whether the customer's chosen Local Exchange Carrier is the carrier which originally assigned the number to the customer, without penalty to either the customer or its chosen Local Exchange Carrier.

- 1.53 "NXX", "NXX Code", "Central Office Code" or "CO Code" is the three-digit switch entity indicator which is defined by the "D", "E", and "F" digits of a 10-digit telephone number within the North American Numbering Plan ("NANP"). Each NXX Code contains 10,000 station numbers. Historically, entire NXX code blocks have been assigned to specific individual local exchange end office switches.**
- 1.54 "Party" means either BST or KMC, and "Parties" means BST and KMC.**
- 1.55 "Permanent Number Portability" or "PNP" means the use of a database solution to provide fully transparent LTNP for all customers and all providers.**
- 1.56 "Port Element" or "Port" is a component of a Telephone Exchange Service. For purposes of general illustration, the "Port" serves as the hardware termination for the customer's telephone exchange service on that switch and generates dial tone and provides the customer a pathway into the public switched telecommunications network and provides access to 911, directory assistance and other operator services. Each Port is typically associated with one (or more) telephone number(s) which serves as the customer's network address.**
- 1.57 "Rate Center" means the specific geographic point and corresponding geographic area which have been identified by a given LEC as being associated with a particular NPA-NXX code which has been assigned to the LEC for its provision of**

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Telephone Exchange Services. The "rate center point" is the finite geographic point identified by a specific V&H coordinate, which is used to measure, for the purpose of billing to end users, distance-sensitive traffic to/from Telephone Exchange Services bearing the particular NPA-NXX designation associated with the specific Rate Center. The "rate center area" is the exclusive geographic area which the LEC has identified as the area within which it will provide Telephone Exchange Services bearing the particular NPA-NXX designation associated with the specific Rate Center. The Rate Center point must be located within the Rate Center area.

1.58 "Rating Point" or "Routing Point" means a location which a LEC has designated on its own network as the homing (routing) point for traffic inbound to Telephone Exchange Services provided by the LEC which bear a certain NPA-NXX designation. The Rating Point is also used to calculate mileage measurements for the distance-sensitive transport element charges of Switched Exchange Access Services. Pursuant to Bellcore Practice BR 795-100-100, the Rating Point may be an "End Office" location, or a "LEC Consortium Point of Interconnection." Pursuant to that same Bellcore Practice, examples of the latter shall be designated by a common language location identifier (CLLI) code with (x)KD in positions 9, 10, 11, where (x) may be any A-Z or 0-9. The Rating Point/Routing Point must be located within the LATA in which the corresponding NPA-NXX is located. However Rating Point/Routing Point associated with each NPA-NXX need not be the same as the corresponding Rate Center Point, nor must it be located within the corresponding Rate Center Area, nor must there be a unique and separate Rating Point corresponding to each unique and separate Rate Center.

1.59 "Reciprocal Compensation" is As Described in the Act, and refers to the payment arrangements that recover costs incurred for the transport and termination of Telecommunications traffic originating on one Party's network and terminating on the other Party's network.

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- 1.60 "Signal Transfer Point" or "STP" performs a packet switching function that routes signaling messages among network signaling points (including other STPs) in order to set up calls and to query databases for advanced services.**
- 1.61 "Switched Access Detail Usage Data" means a category 1101XX record as defined in the EMR Bellcore Practice BR 010-200-010.**
- 1.62 "Switched Access Summary Usage Data" means a category 1150XX record as defined in the EMR Bellcore Practice BR 010-200-010.**
- 1.63 "Switched Exchange Access Service" means the following types of Exchange Access Services: Feature Group A, Feature Group B, Feature Group D, 800/888 access, and 900 access and their successors or similar Switched Exchange Access services.**
- 1.64 "Synchronous Optical Network" or "SONET" is an optical interface standard that allows interworking of transmission products from multiple vendors (i.e. mid-span meets). The base rate is 51.84 Mbps (OC-1/STS-1) and higher rates are direct multiples of the base rate, up to 13.22 Gbps.**
- 1.65 "Technically Feasible Point" is As Described in the Act.**
- 1.66 "Telecommunications" is As Defined in the Act.**
- 1.67 "Telecommunications Act" refers to the Telecommunications Act of 1996 and any rules and regulations promulgated thereunder.**
- 1.68 "Telecommunications Carrier" is As Defined in the Act.**
- 1.69 "Telecommunications Service" is As Defined in the Act.**
- 1.70 "Telephone Exchange Service" is As Defined in the Act.**

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- 1.71 "Telephone Toll Service" is As Defined in the Act.**
- 1.72 "Trunk Side" refers to a central office switch connection that is capable of, and has been programmed to treat the circuit as, connecting to another switching entity, for example a private branch exchange ("PBX") or another central office switch. Trunk side connections offer those transmission and signaling features appropriate for the connection of switching entities, and cannot be used for the direct connection of ordinary telephone station sets.**
- 1.73 "Unbundled Element Bona Fide Request" means the process described on Exhibit 2 that prescribes the terms and conditions relating to a Party's request that the other Party provide an unbundled Element or other service, function or product not otherwise provided by the terms of this Agreement.**
- 1.74 "Wire Center" means a building or space within a building which serves as an aggregation point on a given carrier's network, where transmission facilities and circuits are connected or switched.**

2.0 INTERPRETATION AND CONSTRUCTION

All references to Sections, Exhibits and Attachments shall be deemed to be references to Sections of, and Exhibits and Attachments to, this Agreement unless the context shall otherwise require. The headings of the Sections and the terms defined in Exhibit 1 are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including BST or other third party offerings, guides or practices), statute, regulation, rule or tariff is to such agreement, instrument, statute, regulation, rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

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**3.0 IMPLEMENTATION SCHEDULE AND INTERCONNECTION
ACTIVATION DATES**

Subject to the terms and conditions of this Agreement, Interconnection of the Parties' facilities and equipment pursuant to Sections 4.0, 5.0, 6.0, 7.0, 8.0, and 18.0, shall be established on or before the corresponding "Interconnection Activation Date" shown for each LATA on Exhibit 3.

Exhibit 3 may be revised and supplemented from time to time upon the mutual agreement of the Parties to reflect the Interconnection of additional LATAs pursuant to Section 4.5 by attaching one or more supplementary schedules to such Exhibit.

**4.0 NETWORK INTERCONNECTION ARCHITECTURE PURSUANT TO
SECTION 251 (c)(2)**

4.1 Scope

Section 4.0 describes the physical architecture for interconnection of the Parties' facilities and equipment for the transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic pursuant to Section 251(c)(2) of the Act. Sections 5.0 and 6.0 prescribe the specific trunk groups (and traffic routing parameters) which will be configured over the physical connections described in this Section 4.0 related to the transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic, respectively. Other trunk groups, as described in this Agreement, may be configured using this architecture. Initially, KMC and BST will use a Physical Architecture as described in Section 4.2, and upon mutual agreement will transition to a SONET Physical Architecture as described in Section 4.3.

4.1.1 In each LATA identified in Exhibit 3 to this Agreement, the correspondingly identified BST and KMC Interconnection Wire Centers (IWC) shall serve as the BST Interconnection Wire Center ("BIWC") and KMC Interconnection Wire Center ("KIWC"), respectively, at

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which points BST and KMC will initially interconnect their respective networks for inter-operability within that LATA.

4.1.2 KMC and BST shall provision trunk circuits to one another for interconnection at the KIWC and BIWC pursuant to Sections 5.0, 6.0, 7.0, 8.0, and 18.0 of this Agreement. KMC shall interconnect to the BST 911 tandem either via its own facilities or any certificated carrier's facilities. BST shall initially interconnect to logically and diversely routed KIWC trunk circuits from BST's BIWCs to KMC's KIWC, pursuant to Sections 4.0, 5.0, 6.0, and 7.0 of this Agreement. The interconnection of these trunks shall be at the BST BIWC in each LATA as identified on Exhibit 3. The agreed Physical Architecture that will be used is described within this section.

4.2 Initial Physical Architecture

4.2.1 KMC shall be responsible for maintaining sufficient transmission facilities to interconnect to trunk circuits provided by BST at each BIWC. BST shall be responsible for maintaining sufficient transmission facilities to interconnect to trunk circuits provided by KMC at each KIWC. The initial physical architecture will be electrical DS3 or DS1 (or multiples thereof).

4.2.2 The physical architecture shall occur over Collocation and/or leased facilities, including but not limited to a BST SONET Smartring Node at either Party's premises in accordance with Section 12.0, or any other arrangement to which the Parties may mutually agree.

4.2.3 Specific trunk groups (and traffic routing parameters) will be configured over the physical architecture for transmission and routing of Telephone Exchange Service traffic and for transmission and routing of Exchange Access traffic pursuant to Sections 5.0 and 6.0, respectively.

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4.2.4 Upon mutual agreement, at anytime during the term of this Agreement, the Parties may transition to a SONET transmission system, or any other mutually agreed network interconnection architecture, for the applicable LATA.

4.3 SONET Physical Architecture

Upon mutual agreement, KMC and BST shall jointly engineer and operate a single Synchronous Optical Network ("SONET") transmission system, or any other comparable arrangement by which they shall interconnect their networks for the transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic pursuant to Section 251(c)(2) of the Act. The Parties shall each designate a single BIWC/KIWC location where each party has fiber optic cable connectivity. Unless otherwise mutually agreed, this SONET transmission system shall be engineered, installed, and maintained as described in this Section 4.0 and in the Joint Grooming Plan (as defined in Section 8.0).

4.3.1 The Parties shall jointly determine and agree upon the specific Optical Line Terminating Multiplexor ("OLTM") equipment to be utilized at each end of the SONET transmission system. If the Parties cannot agree on the OLTM, the following decision criteria shall apply to the selection of the OLTM:

a) First, the type of OLTM equipment utilized by both Parties within the LATA. Where more than one type of OLTM equipment is used in common by the Parties within the LATA, the Parties shall choose from among the common types of OLTM equipment according to the method described in subsection c) below;

b) Second, the type of OLTM equipment utilized by both Parties anywhere outside the LATA. Where more than one type of OLTM equipment is used in common by the Parties outside the LATA, the Parties shall choose from

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among the common types of OLTM equipment according to the method described in subsection c) below; and

c) Third, the Party first selecting the OLTM equipment shall be determined by lot and the choice to select such OLTM equipment shall thereafter alternate between the Parties.

- 4.3.2** BST shall, wholly at its own expense, procure, install and maintain the agreed upon OLTM equipment in the BST Interconnection Wire Center ("BIWC") identified for each LATA set forth in Exhibit 3 in capacity sufficient to provision and maintain all logical trunk groups prescribed by Sections 5.0 and 6.0.
- 4.3.3** KMC shall, wholly at its own expense, procure, install and maintain the agreed upon OLTM equipment in the KMC Interconnection Wire Center ("KIWC") identified for that LATA in Exhibit 3 in capacity sufficient to provision and maintain all logical trunk groups prescribed by Sections 5.0 and 6.0.
- 4.3.4** BST shall designate a manhole or other suitable entry-way immediately outside the BIWC as a Fiber-Meet entry point, and shall make all necessary preparations to receive, and to allow and enable KMC to deliver, fiber optic facilities into that manhole with sufficient spare length to reach the OLTM equipment in the BIWC. KMC shall deliver and maintain such strands wholly at its own expense.
- 4.3.5** KMC shall designate a manhole or other suitable entry-way immediately outside the KIWC as a Fiber-Meet entry point, and shall make all necessary preparations to receive, and to allow and enable BST to deliver, fiber optic facilities into that manhole with sufficient spare

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length to reach the OLTM equipment in the KIWC. BST shall deliver and maintain such strands wholly at its own expense.

- 4.3.6** KMC shall pull the fiber optic strands from the KMC-designated manhole/entry-way into the KIWC and through appropriate internal conduits KMC utilizes for fiber optic facilities and shall connect the BST strands to the OLTM equipment KMC has installed in the KIWC.
- 4.3.7** BST shall pull the fiber optic strands from the BST-designated manhole/entry-way into the BIWC and through appropriate internal conduits BST utilizes for fiber optic facilities and shall connect the KMC strands to the OLTM equipment BST has installed in the BIWC.
- 4.3.8** Each Party shall use its best efforts to ensure that fiber received from the other Party will enter the Party's Wire Center through a point separate from that which the Party's own fiber exited.
- 4.3.9** The Parties shall jointly coordinate and undertake maintenance of the SONET transmission system. Each Party shall be responsible for maintaining the components of the SONET transmission system.

4.4 Technical Specifications

- 4.4.1** KMC and BST shall work cooperatively to install and maintain a reliable network. KMC and BST shall exchange appropriate information – e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government and such other information as the Parties shall mutually agree – to achieve this desired reliability.

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4.4.2 KMC and BST shall work cooperatively to apply sound network management principles by invoking network management controls to alleviate or to prevent congestion.

4.5 Interconnection In Additional LATAs

4.5.1 If KMC determines to offer Telephone Exchange Services in any other LATA in which BST also offers Telephone Exchange Services, KMC shall provide written notice to BST of the need to establish Interconnection in such LATA pursuant to this Agreement.

4.5.2 The notice required by Section 4.5.1 shall include (i) the initial Routing Point KMC has designated in the new LATA; (ii) KMC's requested Interconnection Activation Date; and (iii) a non-binding forecast of KMC's trunking requirements.

4.5.3 The Parties shall mutually agree to designate single KMC and BST Wire Centers to facilitate efficient and robust network.

4.5.4 Unless otherwise agreed by the Parties, the Interconnection Activation Date in each new LATA shall be the earlier of (i) the date mutually agreed by the Parties and (ii) the date that is one-hundred twenty (120) days after the date on which KMC delivered notice to BST pursuant to Section 4.5.1. Within ten (10) business days of BST's receipt of KMC's notice, BST and KMC shall confirm the BIWC, the KIWC and the Interconnection Activation Date for the new LATA by attaching a supplementary schedule to Exhibit 3.

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5.0 TRANSMISSION AND ROUTING OF TELEPHONE EXCHANGE SERVICE TRAFFIC PURSUANT TO SECTION 251(c)(2)

5.1 Scope

Section 5.0 prescribes parameters for trunk groups (the "Local/IntraLATA Trunks") to be effected over the interconnections specified in Section 4.0 for the transmission and routing of Local Traffic and IntraLATA Toll Traffic between the Parties' respective Telephone Exchange Service Customers and where such traffic is not presubscribed for carriage by a third party carrier.

5.2 Trunk Connectivity

The Parties shall reciprocally terminate Local/intraLATA Traffic and Information Services Traffic, originating on each other's networks. The Parties shall jointly engineer and configure Local/IntraLATA Trunks over the physical interconnection arrangements as follows:

- 5.2.1** BST shall make available to KMC at the BIWC, local/intraLATA trunk connections over which KMC may terminate traffic as described herein. These trunk connections shall be subsequently referred to as "BIWC trunks."
- 5.2.2** KMC shall make available to BST at the KIWC, local/intraLATA trunk connections over which BST may terminate traffic as described herein. These trunk connections shall be subsequently referred to as "KIWC trunks."
- 5.2.3** BIWC and KIWC trunk connections shall be made at a DS-1 or multiple DS-1 level, including SONET. The ordering of the trunks associated with these trunking arrangements will be via industry accepted format/specifications.
- 5.2.4** KMC shall deliver all end user to end user local and intraLATA traffic within the LATA to each BST BIWC

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identified in Exhibit 3 (KMC understands and agrees that BST cannot guarantee a P.01 level grade of service for local and intraLATA traffic that is routed through two access tandems.) KMC agrees to terminate local end user to end user traffic directly to additional BST Access Tandems in the LATA once KMC's terminating end user to end user local traffic volumes exceed 150,000 monthly minutes of use consistently to those access tandems.

5.2.5 Initial KIWC trunks will be configured in a manner as depicted in Exhibit 5.0. BST shall deliver all end user to end user local and intraLATA traffic within the LATA to each KMC KIWC identified in Exhibit 3.

5.2.6 The Parties shall establish special BIWC and KIWC trunk groups as needed to allow for ISDN interoperability utilizing the B8ZS ESF protocol for 64 Kbps clear channel transmission.

5.3 Use of 1-Way and 2-Way Trunks

The Parties agree to make their best efforts to implement two-way trunks by the end of the third quarter 1997, and sooner if possible. Initially, the Parties will configure all Local/IntraLATA trunk groups as one-way trunks or as two-way trunks by the end of the third quarter of 1997, by issuance of an ASR from KMC.

5.4 Signaling

5.4.1 The Parties will provide Common Channel Signaling (CCS) to one another, where and as available, in conjunction with all BIWC and KIWC trunk groups. The costs for such CCS shall be shared equally by the Parties on a 50/50 basis. The Parties will cooperate on the exchange of Transactional Capabilities Application Part (TCAP) messages to facilitate full inter-operability of CCS-based features between their respective networks, including all CLASS features and functions, to the extent each carrier offers such features and

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functions to its own end users. All CCS signaling parameters will be provided, including calling party number (CPN), originating line information (OLI), calling party category, charge number, etc. The Parties will work cooperatively to provide calling party name delivery service to each other. All privacy indicators will be honored. Network signaling information such as Carrier Identification Parameter (CCS platform) and CIC/OZZ information (non-CCS environment) will be provided wherever such information is needed for call routing or billing. For traffic for which CCS is not available, in-band multi-frequency (MF), wink start, E&M channel-associated signaling with ANI will be forwarded.

5.4.2 The Parties shall establish company-wide CCS interconnections STP-to-STP. Such interconnections shall be made at the KIWC and BIWC, and other points, as necessary and as jointly agreed to by the parties. During the term of this Agreement neither party shall charge the other Party additional usage sensitive rates for SS7 queries made for Local Traffic.

5.4.3 The Parties shall adhere to BST's engineering specifications for signaling.

5.5 Reserved

5.6 Grades of Service

The Parties shall initially engineer and shall jointly monitor and enhance all trunk groups consistent with the Joint Grooming Plan.

5.7 Measurement and Billing

5.7.1 At such time as both parties' systems are capable of utilizing Calling Party Number (CPN) for billing purposes, they will work cooperatively to transition to a billing arrangement which is based upon CPN.

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5.7.2 Measurement of billing minutes of use for traffic exchanged pursuant to this Section 5.0 shall be in actual conversation seconds. The total conversation seconds per chargeable traffic type over each individual trunk group will be totaled for the entire monthly bill-round and then rounded to the next whole minute.

5.7.3 FGD charges for intraLATA traffic carried together with Local Traffic over a combined trunk group shall be calculated as follows:

a) **FGD charges for intraLATA traffic shall be applied as if the BIWC is the serving wire center for the FGD service.**

b) **IntraLATA traffic which would otherwise be subject to originating FGD charges will be rated and billed according to procedures which otherwise apply for the rating and billing of originating FGD traffic.**

c) **The percentage of local usage (PLU) factor should be calculated by dividing the Local Traffic by the total Local Traffic and intraLATA intrastate traffic (the sum of the Local Traffic percentage and the intraLATA intrastate percentage should equal 100%). The reporting of the PLU factor should follow the same guidelines as defined for PIUs.**

The Local Traffic percentage will be applied to the terminating intrastate traffic to determine the terminating Local Traffic usage.

5.8 Reciprocal Compensation Arrangements

The Parties shall compensate one another for the provision of traffic exchange arrangements pursuant to this Section 5.0, ~~only as set forth herein.~~

5.8.1 Reciprocal Compensation applies for transport and termination of Local Traffic (including EAS and EAS-like

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traffic) billable by BST or KMC which a Telephone Exchange Service Customer originates on BST's or KMC's network for termination on the other Party's network.

- 5.8.2** The Parties shall compensate each other for transport and termination of Local Traffic (local call termination) at a single identical, reciprocal and equal rate as set forth in Exhibit 8.
- 5.8.3** The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service. All Switched Exchange Access Service and all IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state tariffs.
- 5.8.4** Each Party shall charge the other Party its effective tariffed intraLATA FGD switched access rates for the transport and termination of all IntraLATA Toll Traffic, which includes intraLATA 800 service.
- 5.8.5** Compensation for transport and termination of all traffic which has been subject to performance of INP by one Party for the other Party pursuant to Section 13.2 shall be compensated per the following:
- a) Compensation for INP calls between KMC and BST for all traffic, including forwarded interexchange carrier calls, will be compensated at reciprocal compensation charges (Section 5.8.2) and Switched Access charges (pursuant to each carrier's respective access tariffs, Sections 5.8.3 and 5.8.4), for local (including EAS) traffic, intraLATA switched access, interLATA interstate and intrastate traffic, respectively, as if the caller had directly dialed the new telephone number.
 - b) In INP arrangements, in order to effect this pass-through of reciprocal compensation and Switched Access charges to which each carrier would otherwise have been entitled if the

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ported traffic had been directly dialed to the new number, each carrier will be required to classify and include ported traffic in its quarterly percentage of use reports as Local, intrastate intraLATA, intrastate interLATA, or interstate interLATA. The quarterly filed percentage of use reports will be applied on a monthly basis against the total minutes billed for the month to approximate INP billed revenues.

6.0 TRANSMISSION AND ROUTING OF EXCHANGE ACCESS TRAFFIC PURSUANT TO 251(c)(2).

6.1 SCOPE

Section 6.0 prescribes parameters for certain trunk groups ("IXC Exchange/3rd Party Trunks") to be established over the Interconnections specified in Section 4.0 for the transmission and routing of Exchange Access traffic between KMC Telephone Exchange Service Customers and Interexchange Carriers.

6.2 Trunk Group Architecture and Traffic Routing

6.2.1 The Parties shall jointly establish IXC Exchange/3rd Party Trunks by which they will jointly provide tandem-transported Switched Exchange Access services to Interexchange Carriers to enable such Interexchange Carriers to originate and terminate traffic from/to KMC's Customers. The interconnection of these trunks shall be at the BST BIWC in each LATA as identified on Exhibit 3.

6.2.2 IXC Exchange/3rd Party Trunks shall be used for the transmission and routing of Exchange Access to allow KMC's Customers to connect to or be connected to the interexchange trunks of any Interexchange Carrier which is connected to a BST Access Tandem, and in accordance with Exhibit 5.

6.2.3 The IXC Exchange/3rd Party Trunks shall be two-way trunks connecting an End Office Switch KMC utilizes to provide

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Telephone Exchange Service and Switched Exchange Access in a given LATA to an Access Tandem Switch BST utilizes to provide Exchange Access in such LATA.

6.2.4 The Parties shall jointly determine which BST access Tandem(s) will be sub-tended by each KMC End Office Switch. Except as otherwise agreed by the Parties, BST shall allow each KMC End Office Switch to sub-tend the access Tandem nearest to the Routing Point associated with the NXX codes assigned to that End Office Switch and shall not require that a single KMC End Office Switch sub-tend multiple access Tandems, even in those cases where such End Office Switch serves multiple Rate Centers.

6.2.5 BST shall, except in instances of capacity limitations, permit and enable KMC to sub-tend the BST access tandem switch(es) nearest to the KMC Rating Point(s) associated with the NPA-NXX(s) to/from which the Switched Access Services are homed. In instances of capacity limitation at a given access tandem switch, KMC shall be allowed to sub-tend the next-nearest BST access tandem switch in which sufficient capacity is available. The Meet Point Billing ("MPB") percentages for each new Rating Point/access tandem pair shall be calculated according to one of the three methods identified in the MECAB document.

KMC shall inform BST of the tandem(s) it wishes to sub-tend in any new LATA and the parties shall jointly determine the calculation of the billing percentages which should apply for such arrangement. KMC will deliver notice to BST of all new routes. BST and KMC shall confirm each new route and associated billing percentages in a Letter of Understanding, and shall file these percentages in NECA Tariff No. 4, within a reasonable time following receipt of KMC's notice by BST.

6.3 Meet Point Billing Arrangements

Meet Point Billing arrangements between the Parties for jointly provided

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Switched Exchange Access Services on IXC Exchange/3rd Party Trunks will be governed by the terms and conditions of this Section 6.0 and Exhibit 4 for Switched Access Meet Point Billing and shall be billed at each Party's applicable switched access rates.

- 6.3.1 KMC and BST will establish meet point billing arrangements in order to provide a common transport option to Switched Access Services customers via a BST access tandem switch, in accordance with the Meet Point Billing guidelines adopted by and contained in the Ordering and Billing Forum's MECAB and MECOD documents, except as modified herein, and in Exhibit 4. The arrangements described in this Section 6.0 and in Exhibit 4 are intended to be used to provide Switched Access Service that originates and/or terminates on a KMC-provided Telephone Exchange Service where the transport component of the Switched Access Service is routed through a BST-provided tandem switch.**
- 6.3.2 Common channel signaling ("CCS") shall be utilized in conjunction with meet point billing arrangements to the extent such signaling is resident in the BST access tandem switch.**
- 6.3.3 KMC and BST will use their best reasonable efforts, individually and collectively, to maintain provisions within the National Exchange Carrier Association ("NECA") Tariff No. 4, or any successor tariff, sufficient to reflect the MPB arrangements between the parties, including Exhibit 4.**
- 6.3.4 Each Party shall implement the "Multiple Bill/Single Tariff" option in order to bill an IXC for the portion of the jointly provided telecommunications service provided by that Party. For all traffic carried over the MPB arrangement, each Party shall only bill the rate elements identified for it in Exhibit 4. For transport elements subject to billing percentages, each Party shall utilize the billing percentages as filed in NECA Tariff No. 4, or any successor tariff. The MPB percentages**

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for each route shall be calculated according to one of the three methods identified in the MECAB document, and the Parties agree to work cooperatively to establish percentages as necessary. The actual rate values for each element shall be the rates contained in that Party's own effective Federal and State access tariffs. The Parties shall utilize a monthly billing period for meet point billing.

- 6.3.5** BST shall provide to KMC the billing name, billing address, and CIC of the IXCs in order to comply with the MPB Notification process as outlined in the MECAB document and pursuant to OBF guidelines.
- 6.3.6** Access usage data will be exchanged between the Parties in a manner acceptable to both Parties. If access usage data is not processed and delivered by either Party as agreed and in turn such other Party is unable to bill the IXC, the delivering Party will be held liable for the amount of lost billing.
- 6.3.7** The parties agree that further discussion is required regarding a "Single Bill" option for the delivery of a single consolidated billing statement each month.
- 6.3.8** In the event errors are discovered by KMC, the IXC or BST, both BST and KMC agree to provide the other Party with notification of any discovered errors within two (2) business days of the discovery. In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data and, if such reconstruction is not possible, shall accept a reasonable estimate of the lost data based upon three (3) to twelve (12) months of prior usage data. Errors that are discovered by the IXC or billing disputes that originate from the IXC will be handled by the parties in accordance with the MECAB document.

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6.3.9 Either Party may request a review or audit of the various components of access recording. Such review or audit shall be conducted subject to confidentiality protection.

6.3.10 The Parties shall not charge one another for the services rendered or information provided pursuant to this Section 6.0 of this Agreement.

6.3.11 MPB will apply for all traffic bearing the 800, 888, or any other non-geographic NPA which may be likewise designated for such traffic in the future, where the responsible party is an IXC. In those situations where the responsible party for such traffic is a LEC, full switched access rates will apply.

7.0 TRANSPORT AND TERMINATION OF OTHER TYPES OF TRAFFIC

7.1 Information Services

Prior to the time that KMC and BST route Information Services traffic to one another, they shall agree to exchange rating and billing information to effectively allow one another to bill their respective end users.

7.2 BLV/BLVI Traffic

For BLV/BLVI Traffic, each Party's operator bureau shall accept BLV/BLVI inquiries from the operator bureau of the other Party, in order to allow transparent provision of Busy Line Verification ("BLV") and Busy Line Verification and Interrupt ("BLVI") services between their networks. KMC, at its option, shall route BLV and BLVI inquiries to BST's operator bureau over the appropriate BIWC trunks within the LATA. BST, at its option, shall route BLV and BLVI inquiries to KMC's operator bureau over the appropriate KIWC trunks within the LATA. Each Party shall compensate the other Party for BLV and BLVI inquiries according to the effective BST rates identified in Attachment C-10, which may be modified to reflect future tariff changes.

7.3 Transit Function

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- 7.3.1** BST agrees that it shall provide a Transit Function to KMC on the terms and conditions set forth in this Section 7.3 and at a rate set forth in Exhibit 8.
- 7.3.2** "Transit Function" means the delivery of certain traffic between KMC and a third party LEC by BST over the IXC Exchange/3rd Party Trunks. The following traffic types will be delivered: (i) Local Traffic originated from KMC to such third party LEC, (ii) Local Traffic originated from such third party LEC and terminated to KMC, and (iii) Wireless traffic, if any, that is carried over the IXC Exchange/3rd Party Trunks.
- 7.3.3** While the Parties agree that it is the responsibility of each third party LEC to enter into arrangements to deliver Local Traffic to KMC, they acknowledge that such arrangements are not currently in place. BST will, unless notified to the contrary, pass 3rd party LEC traffic to/from KMC. Nothing in this provision shall prohibit either Party from establishing other financial arrangements for this transit traffic with the other LECs from/to whose network such traffic ultimately originates or terminates. It is acknowledged by both Parties that the terminating carrier should receive compensation with either the intermediary carrier providing a billing clearinghouse function for these calls or the originating and terminating carrier compensating each other directly.
- 7.3.4** BST expects that all networks involved in transit traffic will deliver each call to each involved network with CCS and the appropriate Transactional Capabilities Application Part ("TCAP") message to facilitate full interoperability and billing functions. In all cases, KMC is responsible to follow the Exchange Message Record ("EMR") standard and exchange records with both BST and the terminating LEC to facilitate the billing process to the originating network.
- 7.3.5** For purposes of this Section 7.3, BST agrees that it shall make available to KMC, at KMC's sole option, any transiting

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arrangement BST offers to another Local Exchange Carrier at the same rates, terms and conditions provided to such other Local Exchange Carrier.

7.3.6 Where KMC routes Local Traffic, BLV/BLVI Traffic, or Information Services Traffic to other LECs via the BIWC trunks (or a subsequently consolidated two-way trunk group pursuant to the Joint Grooming Plan prescribed in Section 8.0), KMC shall pay BST only a single per minute of use transit charge as identified in Exhibit 8. Where BST routes Local Traffic, BLV/BLVI Traffic, or Information Services Traffic originated from another LEC to KMC via the KIWC trunks (or a subsequently consolidated two-way trunk group pursuant to the Joint Grooming Plan prescribed in Section 8.0), neither party shall apply a transiting charge to the other.

8.0 JOINT GROOMING PLAN AND INSTALLATION, MAINTENANCE, TESTING AND REPAIR

8.1 Joint Grooming Plan

KMC and BST will jointly develop and agree on a Joint Interconnection Grooming Plan which shall define and detail, inter alia, prescribing standards to ensure that 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. Such plan shall also include mutually-agreed upon default standards for the configuration of segregated BIWC trunk groups and segregated KIWC trunk groups. In addition, the plan shall also include standards and procedures for notification of trunk disconnections and discoveries of trunk disconnections. The plan shall include definitive parameters which define under what circumstances the parties may transition trunk groups to two-way trunk groups. The Parties will use their best collective good faith efforts to complete and agree on such plan within 180 days following execution of this Agreement. Furthermore, the plan should include maintenance of the SONET transmission system, disaster

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recovery provision escalations, and such other matters as the Parties may agree.

8.2 Installation, Maintenance, Testing, and Repair

Unless otherwise identified within the Agreement or mutually agreed, BST's standard intervals for Feature Group D Exchange Access Services will be used for interconnection. KMC shall meet the same intervals for comparable installations, maintenance, joint testing, and repair of its facilities and services associated with or used in conjunction with Interconnection or shall notify BST of its inability to do so and will negotiate such intervals in good faith.

9.0 UNBUNDLED ACCESS – SECTION 251(c)(3)

9.1 Local Loop Transmission Types

Subject to Section 9.4, BST shall allow KMC to access the following Loop types (in addition to those Loops available under applicable tariffs) unbundled from local switching and local transport in accordance with the terms and conditions set forth in this Section 9.0:

- 2-Wire Analog Loops,**
- 4-Wire Analog Loops,**
- 2-Wire ISDN Digital Grade Links or BRI ISDN,**
- 2-Wire ADSL-Compatible Loops,**
- 2-Wire HDSL-Compatible Loops, and**
- 4-Wire HDSL-Compatible Loops.**

Loops will be offered hereunder on the terms and conditions specified herein and on such other terms in applicable tariffs that are not inconsistent with the terms and conditions set forth herein

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and the principles enumerated in Commission and/or FCC rules or orders.

9.2 Port Types

BST shall make available to KMC unbundled Ports at the rates specified in Attachment C-16. KMC may, at its option, elect a rate that BST is obligated to provide to any other LEC operating within its service territory as a result of any proceeding before any Court, State Commission or the FCC or any voluntary agreement or arbitration proceeding pursuant to the Act or pursuant to any applicable state law. The Parties may mutually agree to negotiate rates for unbundled switching that will enable KMC to provide a loop to be cross-connected to a BST switch.

9.3 Private Lines, Unbundled Loops, and Special Access

BST shall make available to KMC private lines, unbundled loops, and special access services in accordance with the terms and conditions of and at the rates specified in applicable tariffs and/or orders consistent with Commission and/or FCC pricing principles.

9.4 Limitations on Unbundled Access

9.4.1 KMC shall access BST's unbundled Network Elements via Collocation in accordance with Section 12 at a BST premises where those elements exist and each Loop or Port shall be delivered to KMC's Collocation by means of a Cross Connection.

9.4.2 If KMC orders a Loop type and the distance requested on such Loop exceeds the transmission characteristics as referenced in the corresponding Technical Reference specified below, distance extensions may be required and additional rates and charges may apply and will be developed and reviewed based upon costs consistent with, and subject to, Commission and/or FCC rules for the pricing of unbundled network elements.

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Loop Type	Technical Reference/Limitation
Electronic Key Line	2.5 miles
ISDN	Bellcore TA-NWT-000393
HDSL 2W	T1E1 Technical Report Number 28
HDSL 4W	T1E1 Technical Report Number 28
ADSL 2W	ANSI T1.413-1995 Specification

9.5 Provisioning of Unbundled Loops

Installation intervals for service established via Unbundled loops will be handled in the same timeframe as BST provides services to its own customers, as measured from date of customer order to date of customer delivery. BST will make best effort to install unbundled loops by the Customer Desired Due Date (CDDD) where facilities permit. Service requests with a shorter than standard interval or those that require out-of-hours provisioning may be subject to additional charges.

9.6 Pricing Provisions

KMC shall compensate BST for Unbundled Loops at the rates set forth in Attachment C-15.

9.7 Request for Access To Other Unbundled Elements

9.7.1 BST shall, upon request of KMC, and to the extent technically feasible, provide to KMC access to its unbundled elements for the provision of KMC's communications service. Any request by KMC for access to a BST unbundled element that is not already available shall be treated as an unbundled element Bona Fide

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Request. The Parties shall adhere to the process as agreed and described in Exhibit 2.

9.7.2 Rates for other Unbundled Elements shall be determined pursuant to Section 252(d) of the Act and will be agreed to at the time of the request.

9.7.3 An Unbundled Element obtained by KMC from BST under this Section 9.0 may be used in combination with the facilities of KMC only to provide a Telecommunications Service, including obtaining billing and collection, transmission, and routing of the Telecommunications Service.

9.7.4 Notwithstanding anything to the contrary in this Section 9.0, BST shall not be required to provide a proprietary Unbundled Element to KMC under this Section 9.0 except as required by the Commission or FCC.

9.8 Unbundled Element Interconnection and Maintenance

9.8.1 Interconnection shall be achieved via Collocation arrangements KMC shall maintain at the BST premises at which the unbundled elements are resident.

9.8.2 KMC and BST shall work cooperatively so that each Loop may be delivered to the KMC Collocation arrangement over an individual 2/4-wire hand-off, in multiples of 24 over a digital DS-1 hand-off in any combination or order KMC may specify, or through other technically feasible and economically comparable hand-off arrangements requested by KMC (e.g., SONET STS-1 hand-off).

9.8.3 All switched and transport-based features, functions, service attributes, grades-of-service, install, maintenance and repair intervals which apply to services provided to BST end users will apply to like services ordered by KMC.

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- 9.8.4** BST will use its best efforts to bill all unbundled loop facilities purchased by KMC (either directly or by previous assignment by a customer) on a single consolidated statement per LATA.
- 9.8.5** Where BST utilizes digital loop carrier ("DLC")¹ technology to provision the Loop of bundled Telephone Exchange Service to an end user customer who subsequently determines to assign the Loop to KMC and receive Telephone Exchange Service from KMC via such Loop, BST shall, where technically feasible deliver such Loop to KMC on an unintegrated basis, pursuant to KMC's chosen hand-off architecture, without a degradation of end-user service or feature availability.
- 9.8.6** BST will permit KMC to physically collocate digital loop carriers (DLC) and associated equipment at BST premises, including but not limited to, BST Smartring services (nodes) KMC may be leasing from BST, for the purpose of interconnecting to unbundled Loops.
- 9.8.7** BST and KMC will work cooperatively toward interim and long term arrangements by which KMC may place, verify and receive confirmation on orders for unbundled elements via an industry accepted (e.g. OBF developed) format/specification. In addition, BST shall provide KMC with an appropriate on-line electronic file transfer arrangement by which KMC may issue and track trouble-ticket and repair requests associated with interconnection trunking, unbundled loops, and service provider number portability arrangements.

¹ See, Bellcore TR-TSY-000008, *Digital Interface Between the SLC-96 Digital Loop Carrier System and Local Digital Switch* and TR-TSY-000303, *Integrated Digital Loop Carrier (IDLC) Requirements, Objectives, and Interface*.

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9.9 Unbundled Local Transport—Section 271

BST shall provide KMC with access to unbundled local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services and priced consistent with Section 252 of the Act and/or Commission and/or FCC order.

9.10 Unbundled Switching—Sections 251(c)(3) and 271

BST shall provide KMC with access to local switching unbundled from local transport, local loop transmission, and other services priced in accordance with Section 252 of the Act and/or Commission and/or FCC order.

10.0 RESALE OF BST LOCAL TELEPHONE EXCHANGE SERVICES—SECTIONS 251(c)(4) and 251(b)(1)

10.1 Availability of Services

Unless mutually agreed otherwise in a subsequent agreement, BST shall make available to KMC all retail services for resale subject to applicable Federal and/or State Proceedings and/or arbitrations and/or other BST Resale agreements negotiated with other parties and/or Resale tariffs.

10.2 Resale Agreement Amendment

KMC and BST agree to execute an amendment to this Agreement consistent with Resale provisions contained in any Commission and/or FCC orders and/or rules. Unless otherwise mutually agreed, the terms, conditions, rates, and clauses contained within the Agreement will also apply to the Resale Amendment to this Agreement.

10.3 Availability of Wholesale Prices

All of the BST-provided services available for resale shall be priced at BST retail price levels less avoided costs. The wholesale discounts are set forth in Attachment D. At KMC's option, BST shall make available

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to KMC the most favorable nondiscriminatory tariff or contract wholesale prices. Unless otherwise mutually agreed, the prices charged to KMC for resale will be consistent with Resale provisions contained in any Commission and/or FCC orders and/or rules or tariffs.

11.0 NOTICE OF CHANGES -- SECTION 251(c)(5).

If a Party makes a change in its network which it believes will materially affect the inter-operability of its network with the other Party, the Party making the change shall provide at least ninety (90) days advance written notice of such change to the other Party.

12.0 COLLOCATION -- SECTION 251 (c)(6).

12.1 Physical Collocation

BST shall provide to KMC Physical Collocation of equipment necessary for Interconnection (pursuant to Section 4.0) or for access to Unbundled Elements (pursuant to Section 9.0), at its premises including, but not limited to SONET Smartring locations. Such physical collocation shall be consistent with Section 251(c)(6) of the Act, and/or Commission and/or FCC rules or orders.

BST shall provide such Collocation for the purpose of Interconnection or access to Unbundled Network Elements, except as otherwise mutually agreed to in writing by the Parties or as required by the FCC or the Commission and subject to applicable federal and state tariffs.

12.2 Virtual Initially Configured for Physical

Where KMC is Virtually Collocated on the Effective Date in a premises that was initially prepared for Physical Collocation, KMC may elect to (i) retain its Virtual Collocation in that premises and expand that Virtual Collocation according to current procedures and applicable tariffs, or (ii) revert to Physical Collocation, in which case KMC shall coordinate with BST for rearrangement of its equipment (transmission and DLC) and

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circuits, for which BST shall impose no conversion charge where the initial physical collocation arrangement was left in place. All applicable Physical Collocation charges shall apply.

12.3 Virtual Initially Configured for Virtual

Where KMC is Virtually Collocated in a premises which was initially prepared for Virtual Collocation, KMC may elect to (i) retain its Virtual Collocation in that premises and expand that Virtual Collocation according to current procedures and applicable tariffs, or (ii) unless it is not practical for technical reasons or because of space limitations, convert its Virtual Collocation to Physical Collocation at such premises, in which case KMC shall coordinate the construction and rearrangement with BST of its equipment (transmission and DLC) and circuits for which KMC shall pay BST at applicable tariff rates. In addition, all applicable Physical Collocation charges shall apply.

12.4 Transport for Collocation

For both Physical Collocation and Virtual Collocation, the Collocating Party shall provide its own or third-party leased transport facilities and may obtain unbundled network transmission elements and terminate those transport facilities in equipment located in its Collocation space at the Housing Party's premises as described in applicable tariffs or contracts and purchase Cross Connection to services or facilities as described in applicable tariffs or contracts consistent with Commission and/or FCC orders.

12.5 Cross Connection

Where KMC collocates at a BST premises, whether BIWC, or other premises, for whatever purpose, BST shall allow KMC to directly interconnect to any other entity which maintains a Collocation facility at that same premises. BST shall enable such interconnection by effecting a cross connection between those Collocation facilities, as jointly directed by KMC and the other collocated entity. For each such

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cross connection, BST shall charge the otherwise applicable standard tariff or contract special access cross-connect rate to the collocated parties.

12.6 Pricing

The rates for physical collocation shall be those set forth in the Physical Collocation Master Agreement attached as Exhibit 6.

13.0 NUMBER PORTABILITY—SECTION 251(b)(2)

13.1 Scope

BST and KMC will provide Local Telephone Number Portability ("LTNP") on a reciprocal basis between their networks to enable each of their end user customers to utilize telephone numbers associated with a Telephone Exchange Service provided by one Party, in conjunction with a Telephone Exchange Service provided by the other Party, upon the coordinated or simultaneous termination of the first Telephone Exchange Service and activation of the second Telephone Exchange Service.

13.2 Procedures for Providing Interim Number Portability

KMC and BST will provide reciprocal LTNP to one another via Interim Number Portability ("INP") measures. INP shall operate as follows:

13.2.1 An end user customer of Party A elects to become an end user customer of Party B. The end user customer elects to utilize the original telephone number(s) corresponding to the Telephone Exchange Service(s) it previously received from Party A, in conjunction with the Telephone Exchange Service(s) it will now receive from Party B. Upon receipt of a service order assigning the number to Party B (assuming party B has on file a letter of authorization from the end user customer), Party A will implement an arrangement whereby all calls to the original telephone number(s) will be forwarded to a new

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telephone number(s) designated by Party B. Party A will route the forwarded traffic to Party B over the appropriate traffic exchange trunk groups, as if the call had originated on Party A's network.

- 13.2.2** Party B will become the customer of record for the original Party A telephone numbers subject to the INP arrangements. Party A will provide Party B a single consolidated master billing statement for the INP capability with the statement being consistent with industry accepted guidelines. The billing of all collect, calling card, and 3rd-number billed calls associated with those numbers, can be processed in one of two ways: 1) on the single consolidated master billing statement by sub account detail, by retained number and delivered via electronic data transfer, or monthly magnetic tape or 2) via an optional daily usage file. The Parties agree to work cooperatively to develop a process for transmitting usage through CMDS.
- 13.2.3** Party A will update its Line Information Database ("LIDB") listings for retained numbers, and cancel calling cards associated with those forwarded numbers, as directed by Party B. In addition, Party A will update the retained numbers in the LIDB with the screening options provided by Party B. The Parties agree that BST requires a signed LIDB storage agreement to store ported numbers in its LIDB; the Parties agree to work cooperatively to negotiate such an agreement in good faith.
- 13.2.4** Within two (2) business days of receiving notification from the end user customer, Party B shall notify Party A of the customer's termination of service with Party B, and shall further notify Party A as to that customer's instructions regarding its telephone number(s). Party A will reinstate service to that customer, cancel the INP arrangements for

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that customer's telephone number(s), or redirect the INP arrangement to another INP-participating-LEC, pursuant to the customer's instructions at that time.

13.3 Migration to Permanent Number Portability

BST and KMC will migrate from INP to a database-driven Permanent Number Portability ("PNP") arrangement as soon as practically possible, without interruption of service to their respective customers.

13.4 Coordination of Number Portability with Unbundled Elements

Under either an INP or PNP arrangement, KMC and BST will implement a process to coordinate LTNP cut-overs with unbundled Loop conversions (as described in Section 9.0 of this Agreement).

13.5 Cost Recovery of Number Portability

KMC and BST shall provide INP arrangements to one another at cost-recovery levels as identified in Attachments B-3 and B-4. No usage fees will be charged for this capability. It is acknowledged and agreed that the cost-recovery mechanism contained in this Section 13.0 and Attachments B-3 and B-4, will be modified to be consistent with the FCC's Report and Order in Common Carrier Docket No. 95-116 - Rulemaking 8535, regarding number portability, once the Commission has implemented the order.

13.6 Letters of Authority

KMC and BST will be required to file blanket letters of authority with each other certifying that each party has appropriate authorizations on file for each customer on whose behalf they acted as an agent for purposes of INP. In cases of agency authorization disputes, upon request, either party shall provide the other party proof of authorization.

13.7 Ordering Formats/Specifications

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The ordering of INP arrangements and the exchange of screening information will utilize industry accepted format/specifications unless otherwise mutually agreed by the Parties.

13.8 Procedures for Providing INP Through NXX Migration

Where either Party has activated an entire NXX for a single Customer, or activated a substantial portion of an NXX for a single Customer with the remaining numbers in that NXX either reserved for future use or otherwise unused, if such Customer chooses to receive service from the other Party, the first Party shall cooperate with the second Party to have the entire NXX reassigned in the LERG (and associated industry databases, routing tables, etc.) to an End Office operated by the second Party. Such transfer will be accomplished with appropriate coordination between the Parties and subject to appropriate industry lead-times for movements of NXXs from one switch to another.

14.0 DIALING AND NUMBERING RESOURCES, RATE CENTERS AND RATING POINTS

14.1 Dialing Parity--Section 251 (b)(3)

The Parties shall provide Local Dialing Parity to each other as required under Section 251 (b)(3) of the Act.

14.2 Numbering, Rate Centers, and Rating Points

Nothing in this Agreement shall be construed to limit or otherwise adversely impact in any manner either Party's right to employ or to request and be assigned any NANP number resources including, but not limited to, central office (NXX) codes pursuant to the Central Office Code Assignment Guidelines², Commission Rules or FCC Rules, or to establish,

² Last published by the Industry Numbering Committee ("INC") as INC 95-0407-008, Revision 417195, formerly ICCF 93-0729-010.

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by tariff or otherwise, Rate Centers and Rating Points corresponding to such NXX codes.

14.2.1 Each Party agrees to update the LERG with up-to-date listings of its own assigned NPA-NXX codes, along with associated Rating Points and Rate Centers.

14.2.2 It shall be the responsibility of each Party to program and update its own switches and network systems to recognize and route traffic to the other Party's assigned NXX codes at all times. Neither Party shall impose any fees or charges whatsoever on the other Party for such activities, except as expressly defined in this Agreement.

14.2.3 Until such time as KMC is authorized by the FCC or the Commission to vary its rate centers from BST's rate centers, KMC will deploy a minimum of one NXX per established BST rate center area. If KMC receives permission from the FCC or the Commission to vary its rate centers from BST, KMC and BST will develop a toll default compensation mechanism that appropriately compensates each Party for terminating the other Party's calls when the jurisdictional call type cannot be properly estimated.

15.0 ACCESS TO RIGHTS-OF-WAY – SECTION 251(b)(4)

Each Party shall provide the other Party, in accordance with Section 251 of the Act and Commission and/or FCC rules, access to its poles, ducts, rightsof-way and conduits it controls on terms, conditions, and prices comparable to those offered to any other entity pursuant to each Party's applicable tariffs and/or agreements.

16.0 DATABASE ACCESS – SECTIONS 251(c)(3) and 271

In accordance with Section 251(c)(3) and 271 of the Act and Commission and/or FCC rules, BST shall provide KMC with interfaces to access BST's databases and associated signaling necessary for the routing and completion of KMC's traffic.

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17.0 COORDINATED SERVICE ARRANGEMENTS

17.1 Intercept and Referral Announcements

When an end user customer changes from BST to KMC, or from KMC to BST, and does not retain its original telephone number, the Party formerly providing service to the end user will provide a referral announcement on the abandoned telephone number, when requested by either the carrier or customer. This announcement will provide details on the new number to be dialed to reach this customer. BST will provide intercept announcement periods in the same manner as provided for its end users today: three (3) months for residence and one (1) year for business, or until the next directory delivery. In time of severe number shortages, numbers can be removed from intercept and be reused. This will be done in reverse order of aging; that is, the number on intercept longest will be the first reused, regardless of whether the end user is a customer of BST or KMC. KMC will provide this arrangement on a reciprocal basis.

17.2 Coordinated Repair Calls

KMC and BST will employ the following procedures for handling misdirected repair calls:

17.2.1 KMC and BST will educate their respective customers as to the correct telephone numbers to call in order to access their respective repair bureaus.

17.2.2 To the extent the correct provider can be determined, and upon request by the end user, misdirected repair calls will be immediately referred to the proper provider of local Telephone Exchange Service in a courteous manner, at no charge, and the end user will be provided the correct contact telephone number. In responding to repair calls, neither Party shall make disparaging remarks about the other Party, nor shall they use these repair calls as the basis for internal referrals or to solicit customers to market services, nor shall they initiate any extraneous

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communications beyond the direct referral to the correct repair telephone number. Either Party may respond with correct information in answering customer questions.

17.2.3 KMC and BST will provide their respective repair contact numbers to one another on a reciprocal basis. For purposes of this section each party agrees to limit its number of repair numbers to a single telephone number within the region.

18.0 911/E911 ARRANGEMENTS – SECTION 271

18.1 Scope

KMC will interconnect to the BST 911/E911 selective routers/911 tandems which serve the areas in which KMC provides Telephone Exchange Services, for the provision of 911/E911 services and for access to all sub-tending Public Safety Answering Points. BST will provide KMC with the appropriate CLLI codes and specifications of the tandem serving area.

18.2 Path and Route Diverse Interconnection

Path and route diverse interconnections for 911/E911 shall be made as necessary and mutually agreed.

18.3 911 and MSAG Updates

BST will provide KMC with a mutually agreed upon format to enable KMC to provide BST with a daily file transmission to update 911/E911 database information related to KMC Telephone Exchange Service customers. BST will provide KMC with quarterly Master Street Address Guide (MSAG) updates at no charge, upon KMC's request, so that KMC can ensure the accuracy of the addresses provided.

18.4 Interconnection Integrity

BST will use all reasonable efforts to facilitate the prompt, robust,

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reliable and efficient interconnection of KMC systems to the 911/E911 platforms.

18.5 Coordination with PSAPs

BST and KMC will work cooperatively to arrange meetings with PSAPs to answer any technical questions the PSAPs, or county or municipal coordinators may have regarding the 911/E911 arrangements.

18.6 Cost Recovery

Cost recovery for 911/E911 services will be in accordance with the provisions of Attachment C-3.

19.0 DIRECTORY AND OPERATOR SERVICES ARRANGEMENTS -- SECTION 271

19.1 Scope

BST will provide certain operator services and directory services to KMC as defined herein. In this Section 19.0, references to "KMC customer telephone numbers" mean numbers falling within NXX codes directly assigned to KMC and to numbers which are retained by KMC on the customer's behalf pursuant to LTNP arrangements described in Section 13.0.

19.2 Directory Listing and Directory Distribution

KMC and BST's affiliate, BellSouth Advertising and Publishing Company (BAPCO), will execute an agreement to address Directory Listing and Directory Distribution issues. The agreement is attached as Exhibit 7.

19.3 Directory Assistance (DA)

19.3.1 At KMC's request, BST will provide to KMC operators, or to a KMC-designated operator bureau, on-line access to BST's Directory Assistance Service, where such access is

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identical to the type of access BST's own directory assistance operators utilize in order to provide directory assistance services to BST end users. BST will provide this capability under nondiscriminatory tariff or contract rates and terms as identified in Attachment C-9.

19.3.2 At KMC's request, BST will provide to KMC unbranded directory assistance service which is comparable in every way to the directory assistance service BST makes available to its own end users. BST will charge KMC for such unbranded directory assistance capability under non-discriminatory tariff or contract rates and terms as identified in Attachment C-9.

19.3.3 At KMC's request, BST will provide to KMC directory assistance service under KMC's brand which is comparable in every way to the directory assistance service BST makes available to its own end users. KMC recognizes that BST's provision of directory assistance service under KMC's brand may require BST to incur additional costs and that tariff or contract rates will reflect these additional costs. BST will charge KMC for such branded directory assistance capability under the most favorable non-discriminatory tariff or contract rates and terms.

19.3.4 At KMC's request, BST will license to KMC or a KMC-designated operator bureau BST's directory assistance database for use in providing competitive directory assistance services. BST will provide this capability under the most favorable non-discriminatory tariff or contract rates and terms as identified in Attachment C-9.

19.3.5 At KMC's request, BST will in conjunction with 19.2.2 or 19.2.3, above, provide caller-optional directory assistance call completion service, where technically feasible, which is comparable in every way to the directory assistance call completion service BST makes available to its own end

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users. BST will charge KMC for this capability under the most favorable non-discriminatory tariff or contract rates and terms as identified in Attachment C-9 per use of caller-optional directory assistance call completion. BST will provide KMC, in an electronic format, in an accurate and timely manner, the detailed billing records associated with the call that will enable KMC to rebill the end user for this function. BST will use KMC's facilities to complete such calls whenever possible.

19.4 Directory Listing and Directory Assistance Updates

KMC shall furnish to BST, on a daily basis in a mutually acceptable format, a single service request per subscriber for Directory Assistance and Directory Listings information for KMC's end users. The Parties agree to utilize an industry accepted format when available. BST will send confirmation of receipt of KMC's end user orders to KMC on a daily basis. From the single service request, BST shall forward KMC's end user listing information to BAPCO for the publishing of end user listings and the delivery of directories in accordance with the agreement between KMC and BAPCO attached hereto as Exhibit 7.

19.5 Information (Call Guide) Pages

KMC and BAPCO have executed an agreement which enables KMC to display its customer contact information in the part of the Call Guide Pages of the White Pages directory dedicated to new entrant LECs at no charge. The agreement is attached as Exhibit 7.

19.6 Emergency Contact List

BST will provide KMC with a list of emergency agencies (i.e. fire, police, emergency medical technicians, etc) comparable to the current format, to enable KMC to promptly respond to emergency agencies in a timely manner when emergencies occur. BST will provide a copy of its most current list, if available, upon KMC's occasional request. It is acknowledged by KMC that BST assumes no liability for the accuracy of the list.

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19.7 Operator Services

BST will offer to KMC Operator Call Processing Access Service under the most favorable non-discriminatory tariff or contract rates and terms as identified in Attachment C-8.

BST will offer to KMC CMDS Hosting and the Non Sent Paid Report System pursuant to the terms and conditions set forth in Attachments C-11 and C-12.

20.0 GENERAL RESPONSIBILITIES OF THE PARTIES

20.1 Compliance with Implementation Schedule

BST and KMC shall use all reasonable efforts to comply with the Implementation Schedule set forth in Exhibit 3. In advance of the aforementioned implementation schedule, the Parties agree to immediately expedite the implementation of the network interconnection trunks for testing purposes. After completion of testing the network interconnection trunks, the Parties agree to augment the network interconnection trunks, based upon previously exchanged traffic forecasts, to support the exchange of "live" commercial customer traffic.

20.2 Exchange of Information for Network Integrity

The Parties shall exchange technical descriptions and forecasts of their Interconnection and traffic requirements in sufficient detail necessary to establish the Interconnections required to assure traffic completion to and from all Customers in their respective designated service areas.

20.3 Exchange of Traffic Forecasts

Thirty (30) days after the Interconnection Activation Date and each month during the term of this Agreement, each Party shall provide the other Party with a rolling, six (6) calendar month, non-binding forecast of its traffic and volume requirements for the services and Network Elements provided under this Agreement in the form and in such detail as agreed by the Parties. Notwithstanding Section 31.0, the Parties

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agree that each forecast provided under this Section 20.3 shall be deemed "Proprietary Information" under Section 31.0.

20.4 Binding Traffic Forecasts

Any Party that is required pursuant to this Agreement to provide a forecast (the "Forecast Provider") or the Party that is entitled pursuant to this Agreement to receive a forecast (the "Forecast Recipient") with respect to traffic and volume requirements for the services and Network Elements provided under this Agreement may request in addition to non-binding forecasts required by Section 20.3 that the other enter into negotiations to establish a forecast (a "Binding Forecast") that commits such Forecast Provider to purchase, and such Forecast Recipient to provide, a specified volume to be utilized as set forth in such Binding Forecast. The Forecast Provider and Forecast Recipient shall negotiate the terms of such Binding Forecast in good faith and shall include in such Binding Forecast provisions regarding price, quantity, liability for failure to perform under a Binding Forecast and any other terms desired by such Forecast Provider and Forecast Recipient. Notwithstanding Section 31.0, the Parties agree that each forecast provided under this Section 20.4 shall be deemed "Proprietary Information" under Section 31.0.

20.5 Responsibilities to Provide Network Facilities

Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with BST's network and to terminate the traffic it receives in that standard format to the proper address on its network. Such facility shall be designed based upon the description and forecasts provided under Sections 20.2 and 20.3 above. The Parties are each solely responsible for participation in and compliance with national network plans, including The National Network Security Plan and The Emergency Preparedness Plan.

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20.6 Use of Service

Neither Party shall use any service related to or using any of the Services provided in this Agreement in any manner that interferes with other persons in the use of their service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's Customers, and either Party may discontinue or refuse service if the other Party violates this provision. Upon such violation, either Party shall provide the other Party notice, if practicable, at the earliest practicable time.

20.7 Responsibility for Customer Services

Each Party is solely responsible for the services it provides to its Customers and to other Telecommunications Carriers.

20.8 Cooperate to Minimize Fraud

The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

20.9 Responsibility to Administer NXX Codes

Each Party is responsible for administering NXX codes assigned to it.

20.10 Responsibility to Obtain LERG Listings

Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of CLLI codes assigned to its switches.

20.11 Updates to LERG

Each Party shall use the LERG published by Bellcore or its successor for obtaining routing information and shall provide to Bellcore in a timely manner all information required to maintain the LERG.

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20.12 Programming and Updating of Switches

Each Party shall program and update its own Central Office Switches and End Office switches and network systems to recognize and route traffic to and from the other Party's assigned NXX codes. Except as mutually agreed or as otherwise expressly defined in this Agreement, neither Party shall impose any fees or charges on the other Party for such activities.

20.13 Insurance Coverage

At all times during the term of this Agreement, each Party shall keep and maintain in force at each Party's expense all insurance required by law (e.g. workers' compensation insurance) as well as general liability insurance for personal injury or death to any one person, property damage resulting from any one incident, automobile liability with coverage for bodily injury for property damage. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance (which may be provided through a program of self insurance).

20.14 Tariff and Contract Liability Protection

In addition to its indemnity obligations under Section 35.0, each Party shall provide, in its tariffs and contracts with its Customers that relate to any Telecommunications Service or Network Element provided or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any Customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable Customer for the service(s) or function(s) that gave rise to such Loss, and (ii) any Consequential Damages.

20.15 Non-discriminatory Treatment

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

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to the support of items included in this Agreement.

20.16 Prompt Exchange of Billing Records

KMC and BST agree to promptly exchange all necessary records for the proper billing of all traffic.

20.17 Review of Engineering Information

For network expansion, KMC and BST will review engineering requirements on a quarterly basis and establish forecasts for trunk utilization. New trunk groups will be implemented as dictated by engineering requirements for both BST and KMC. BST and KMC are required to provide each other the proper call information (e.g., originated call party number and destination call party number, CIC, OZZ, etc.) to enable each company to bill in a complete and timely fashion.

20.18 Re-arrangement of Initial Interconnection Network Configuration

To the extent that the Parties incur essentially the same expenses, there will be no re-arrangement, reconfiguration, disconnect, or other non-recurring fees associated with the reconfiguration of each carrier's traffic exchange arrangements from the initial interconnection network, other than the cost of establishing a new Collocation arrangement where one does not already exist. To the extent that one Party would incur significantly greater expenses for such reconfiguration, the lowest of the Party's tariffed non-recurring rates applicable to such changes shall apply for such reconfiguration. The Parties agree to work cooperatively to minimize any cost differential.

20.19 Use of Industry Accepted Ordering Formats/Specifications

BST and KMC will utilize industry accepted (e.g. OBF developed) electronic ordering and information data exchange formats/specifications. Where such guidelines are not readily available, Parties will utilize industry accepted (e.g. OBF developed) manual

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formats/exchange mechanisms. If the parties agree not to follow the industry accepted guidelines, they will mutually develop the formats/specifications that will be used.

20.20 Use of Industry Accepted Billing Formats/Specifications

For services covered by this agreement, both Parties agree to follow and use OBF billing output guidelines. If deviations from these guidelines are necessary, a time line should be established as to when the OBF guidelines will be implemented. If the Parties agree not to follow the industry accepted guidelines, they will mutually develop the formats/specifications that will be used. Billing disputes will utilize the dispute processes outlined in each company's tariffs.

20.21 Network Maintenance and Management

Network Maintenance and Management. KMC and BST will work cooperatively to install and maintain a reliable network. KMC and BST will exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, etc.) to achieve this desired reliability.

KMC and BST will work cooperatively to apply sound network management principles by invoking network management controls to alleviate or to prevent congestion.

21.0 TERM AND TERMINATION

21.1 Initial Two Year Term

The initial term of this Agreement shall be two (2) years (the "Term"), which shall commence on the Effective Date. Absent the receipt by one Party of written notice from the other Party at least sixty (60) days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term of this Agreement, this Agreement shall

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automatically renew and remain in full force and effect on and after the expiration of the Term until terminated by either Party pursuant to Section 21.3.

21.2 Termination

Either Party may terminate this Agreement in the event that the other Party (i) fails to pay any amount when due hereunder (excluding Disputed Amounts as described in Section 30.1) and fails to cure such nonpayment within sixty (60) days after receipt of written notice thereof; or (ii) fails to perform any other material obligation required to be performed by it pursuant to this Agreement and fails to cure such material non performance within forty-five (45) days after written notice thereof.

21.3 Termination of Agreement After Automatic Renewal

If pursuant to Section 21.1 this Agreement continues in full force and effect after the expiration of the Term, either Party may terminate this Agreement (90) days after delivering written notice to the other Party of its intention to terminate this Agreement. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 21.3 other than to pay to the other Party any amounts owed under this Agreement.

21.4 Obligations Upon Termination or Expiration

Upon termination or expiration of this Agreement in accordance with this Section 21.0:

- a) Each Party shall comply immediately with its obligations set forth in Section 31.4.9;
- b) Each Party shall continue to perform its obligations and provide the services as described herein until such time as a successor agreement between the Parties is entered into; provided, however, that the Parties shall renegotiate the rates, fees and charges contained herein; and

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- c) Each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement.

21.5 Remedy

No remedy set forth in this Agreement is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under applicable law or otherwise.

22.0 INSTALLATION

BST and KMC shall agree upon and adopt a schedule for implementation of this Agreement.

23.0 PERFORMANCE STANDARDS FOR SPECIFIED ACTIVITIES

23.1 Certain Definitions

When used in this Section 23.0, the following terms shall have the meanings indicated:

23.1.1 "Specified Performance Breach" means the failure by BST to meet the performance Criteria for any Specified Activity for a period of three (3) consecutive calendar months.

23.1.2 "Specified Activity" means any of the following activities:

- a) the installation by BST of unbundled Loops for KMC ("Unbundled Loop Installation");
- b) BST's provision of Interim Number Portability;

or

- c) the repair of out of service problems for KMC

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23.2 Performance Standards

BST shall exercise all reasonable efforts to meet the Performance Criteria for the three Specified Activities. In the event BST fails to meet the Performance Criteria at any time during the term of this Agreement, KMC shall be entitled to pursue all remedies available in law or equity.

At its option, KMC may also request binding arbitration with regard to (1) whether BST has committed a Specified Performance Breach of the Performance Criteria set forth in section 23.1.3 of this Agreement, and (2) if such a breach is determined to have occurred, the direct damages resulting from the breach. The direct damages recoverable under this provision shall not be limited by the provisions of section 28.1, but shall be subject to the provisions of sections 23.3 and 28.3. Such arbitration shall be conducted by a panel of three (3) arbitrators, one to be appointed by each Party pursuant to CPR's Nonadministered Arbitration Rules and subject to the United States Arbitration Act (19 U.S.C. Sections 1-16), to be conducted in Atlanta, Georgia.

In addition, if BST commits a Specified Performance Breach during the term of this Agreement, the Parties agree to meet immediately to determine whether any stipulated damages provisions are appropriate as an amendment hereof in light of such a Breach, and, if so, the terms thereof; provided, however, that if BST commits a Specified Performance Breach during the initial three (3) months of this Agreement, the Parties agree to meet at the end of the three-month period.

23.3 Limitations

In no event shall BST be deemed to have failed to meet any of the Performance Criteria if: BST's failure to meet or exceed any of the Performance Criteria is caused, directly or indirectly, by a Delaying Event. A "Delaying Event" means (a) a failure by KMC to perform any of its obligations set forth in this Agreement (including, without limitation, the Implementation Schedule and the Joint Grooming Plan), (b) any delay, act or failure to act by a Customer, agent or subcontractor of KMC or any Force Majeure Event. If a Delaying Event (i) prevents BST from performing a Specified Activity, then such Specified Activity shall be excluded from the calculation of BST's compliance with the Performance Criteria, or (ii) only suspends BST's ability to

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timely perform the Specified Activity, the applicable time frame in which BST's compliance with the Performance Criteria provided BST performs the Specified Activity in the course of its normal service cycle once the Delaying Event no longer exists; or the Parties agree to a time interval with respect to a particular order that exceeds the interval set forth in Section 23.1.3. In such event, the time interval for BST's performance of the Specified Activities set forth in the order shall be extended to such later date as agreed by the Parties.

23.4 Records

BST shall maintain complete and accurate records, on a monthly basis, of its performance under this Agreement of each Specified Activity and its compliance with the Performance Criteria. BST shall provide to KMC such records in a self-reporting format on a monthly basis. Notwithstanding Section 31.0, the Parties agree that such records shall be deemed "Proprietary Information" under Section 31.0.

24.0 SECTION 252(I) OBLIGATIONS

If BST enters into an agreement subject to approval by the Commission under the Act which provides for the provision of arrangements covered in this Agreement to another requesting Telecommunications Carrier, including itself or its affiliate, or if the Commission and/or FCC orders BST to provide arrangements covered in this Agreement, or if BST tariffs arrangements covered in this Agreement, BST shall make available to KMC such arrangements upon the same rates, terms and conditions as those provided in the other agreements, Commission and/or FCC orders, and/or BST tariffs, consistent with Commission and/or FCC rules. At its sole option, KMC may avail itself of either (i) the other Agreements, orders, or tariffs in their entirety or (ii) the prices, terms and conditions of the other agreements, orders, or tariffs that directly relate to any of the following duties as a whole:

- 1) Interconnection - Section 251 (c)(2) of the Act (Sections 4.0 and 5.0 of this Agreement); or
- 2) Reciprocal Compensation - Section 251(b)(5) of the Act (Section 5.8 of this Agreement); or

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- 3) **Unbundled Loops - Section 251(c)(3) of the Act (Section 9.0 of this Agreement); or**
- 4) **Other Unbundled Access - Section 251(c)(3) of the Act (Unbundled Access other than Unbundled Loops contained in Section 9.0 of this Agreement); or**
- 5) **Resale - Section 251 (c)(4) of the Act (Section 10.0 of this Agreement); or**
- 6) **Collocation - Section 251 (c)(6) of the Act (Section 12.0 of this Agreement); or**
- 7) **Number Portability - Section 251(b)(2) of the Act (Section 13.0 of this Agreement); or**
- 8) **Access to Rights of Way - Section 251 (b)(4) of the Act (Section 15.0 of this Agreement).**

The terms of this Agreement, other than those affected by the option, shall remain in full force and effect. The Parties reserve all rights to argue which Agreements are subject to approval under the Act.

25.0 CANCELLATION

Neither KMC nor BST shall impose cancellation charges upon each other associated with the physical network interconnection.

26.0 SEVERABILITY

In the event the Commission, the FCC, or a court determines that any provision of this Agreement or any order of the Commission or the FCC is contrary to law, or is invalid or unenforceable for any reason, the Parties shall continue to be bound by the terms of this Agreement, insofar as possible, except for the portion determined to be unlawful, invalid, or unenforceable. In such an event, the Parties shall negotiate in good faith to replace the unlawful, invalid or unenforceable provision and shall not discontinue service to the other Party during such period. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory

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requirement of Federal or State law, or any regulations or orders adopted pursuant to such law.

27.0 FORCE MAJEURE

Neither Party shall be responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: fire, explosion, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. In such event, the Party affected shall, upon giving prompt notice to the other Party, be excused from such performance on a day-for-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-for-day basis to the extent such Party's obligations related to the performance so interfered with). The affected party shall use its best efforts to avoid or remove the cause of nonperformance and both Parties shall proceed to perform with dispatch once the causes are removed or cease.

28.0 LIMITATION OF LIABILITY

28.1 Liability for Direct Damages

Except as otherwise provided, the Parties' liability to each other, whether in contract, tort or otherwise, shall be limited to direct damages, which shall not exceed the pro rata portion of the monthly charges for the services for the time period during which the services provided pursuant to this Agreement are inoperative, not to exceed in total BST's or KMC's monthly charge to the other.

28.2 Losses Alleged or Made by Customer

In the case of any Loss arising from a claim made by a customer of either Party, resulting from the negligence or willful misconduct of both Parties, each Party shall bear, and its obligations under this Section 28.0 shall be limited to, that portion (as mutually agreed to by the Parties) of the resulting expense

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caused by its (including that of its agents, servants, contractors or others acting in aid or concert with it) negligence or willful misconduct, and which is properly recoverable under the applicable Party's tariffs.

28.3 No Liability for Indirect Damages

Under no circumstance shall BST or KMC be responsible or liable to each other for indirect, incidental, or consequential damages, including, but not limited to, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, the Parties recognize that BST or KMC may, from time to time, provide advice, make recommendations, or supply other analysis related to the equipment or services described in this Agreement, and, while BST and KMC shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provisions of such advice, recommendations, and analysis.

29.0 ASSIGNMENT

This Agreement shall be binding upon every subsidiary and affiliate of either Party that is engaged in providing telephone exchange and exchange access services in any territory within which BST is an Incumbent Local Exchange Carrier as of the date of this Agreement (the "BST Territory"), and shall continue to be binding upon all such entities regardless of any subsequent change in their ownership. Each Party covenants that, if it sells or otherwise transfers to a third party its telephone exchange and exchange access network facilities within the BST Territory, or any portion thereof, it will require as a condition of such transfer that the transferee agree to be bound by this Agreement with respect to services provided over the transferred facilities. Except as provided in this paragraph, neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party; provided that each Party may assign this Agreement to a corporate Affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

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30.0 DISPUTED AMOUNTS

30.1 Notice

If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall within sixty (60) days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due (i) all undisputed amounts to the Billing Party and (ii) all Disputed Amounts into an interest bearing escrow account with a third party escrow agent mutually agreed upon by the Parties.

30.2 Settlement Negotiations

If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative who has authority to settle the dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one Party to the other Party shall be honored.

30.3 Legal/Regulatory Remedies

If the Parties are unable to resolve issues related to the Disputed Amounts within forty-five (45) days after the Parties' appointment of designated representatives pursuant to Section 30.2, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity. The Commission may direct release of any or all funds (including any accrued interest) in the escrow account, plus applicable late fees, to be paid to either Party.

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30.4 Confidential Treatment of Settlement Negotiations

The Parties agree that all negotiations pursuant to this Section 30.0 shall remain confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

30.5 Interest Accrued on Undisputed Amounts

Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under applicable law.

31.0 NON-DISCLOSURE

31.1 Identification of Information

All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party, other than customer information communicated for the purpose of publication or directory database inclusion, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary," or (iii) communicated orally and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party.

31.2 Return of Information

Upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

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31.3 Protection of Information

Each Party shall keep all of the other Party's Proprietary Information confidential and shall disclose the Proprietary Information to only those employees, contractors, agents or Affiliates who have a need for it in connection with the provision of services under this Agreement, and shall use the other Party's Proprietary Information only for performing the covenants contained in the Agreement. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the parties in writing.

31.4 Excluded Information

Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:

- 31.4.1** "was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party"; or
- 31.4.2** "is or becomes publicly known through no wrongful act of the receiving Party"; or
- 31.4.3** "is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information"; or
- 31.4.4** "is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or
- 31.4.5** "is disclosed to a third person by the disclosing Party without similar restrictions on such third person's rights"; or

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- 31.4.6** "is approved for release by written authorization of the disclosing Party"; or
- 31.4.7** "is required to be made public by the receiving Party pursuant to applicable law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders."
- 31.4.8** If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then either seek appropriate protective relief from all or part of such requirement or, if it fails to successfully do so, it shall be deemed to have waived the Receiving Party's compliance with this Section 31.0 with respect to all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to obtain.
- 31.4.9** In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.

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31.5 Effective Date

Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement.

32.0 CANCELLATION

The parties, at any time, by mutual written agreement, may cancel or amend any rate, term, condition or clause contained in this agreement.

33.0 DISPUTE RESOLUTION

The Parties agree that in the event of a default or violation hereunder, or for any dispute arising under this Agreement or related agreements the Parties may have in connection with this Agreement, prior to taking any action before any court or regulator, or before making any public statement or disclosing the nature of the dispute to any third Party, the Parties shall first confer to discuss the dispute and seek resolution. Such conference shall occur at least at the Vice President level for each Party. In the case of BST, its Vice President for Regulatory Affairs, or equivalent officer, shall participate in the meet and confer meeting, and KMC's Chief Operating Officer, or equivalent officer, shall participate.

34.0 NOTICES

Any notice to a Party required or permitted under this Agreement shall be in writing and shall be deemed to have been received on the date of service if served personally, three days after mailing in the case of first class mail, or on the date stated on the receipt if delivered by certified or registered mail or by a courier service that obtains a written receipt. Notice may also be provided by facsimile, which shall be effective on the next Business Day following the date of transmission. "Business Day" shall mean Monday through Friday, BST/KMC holidays excepted. Any notice shall be delivered using one of the alternatives mentioned in this section and shall be directed to the applicable address indicated below or such other address as the Party to be notified has designated by giving notice in compliance with this section: Any notice to a Party required or permitted under this Agreement shall be in writing and shall be deemed to have been received on the date of service if served personally on the date receipt is

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acknowledged in writing by the recipient if delivered by regular mail, or on the date stated on the receipt if delivered by certified or registered mail or by a courier service that obtains a written receipt. Notice may also be provided by facsimile, which shall be effective on the next Business Day following the date of transmission. "Business Day" shall mean Monday through Friday, BST/KMC holidays excepted. Any notice shall be delivered using one of the alternatives mentioned in this section and shall be directed to the applicable addresses indicated below or such address as the Party to be notified has designated by giving notice in compliance with this section:

If to BST: Attention: General Attorney - Customer Operations Units
BellSouth Telecommunications, Inc.
675 W. Peachtree Street, Suite 4300
Atlanta, Georgia 30375

If to KMC: Attention: President
KMC Telecom Inc.
1545 Route 206
Suite 300
Bedminster, New Jersey 07921

35.0 LIABILITY AND INDEMNITY

35.1 Indemnification

Except as otherwise provided, each Party agrees to release, indemnify, defend, and hold harmless the other Party from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, whether suffered, made, instituted, or asserted by any other party or persons, for invasion of privacy, personal injury to or death of any person or persons, or for losses, damages, or destruction of property, whether or not owned by others, to the extent proximately caused by the indemnifying Party's negligence, or willful misconduct, regardless of form of action.

35.2 Disclaimer

Except as specifically provided to the contrary in this agreement and in BST's and KMC's tariffs, BST and KMC make no representations or warranties to

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each other concerning the specific quality of any services provided under this agreement. Except as otherwise provided, the Parties disclaim, without limitation, any warranty or guarantee of merchantability or fitness for a particular purpose, arising from course of performance, course of dealing, or from usages of trade.

36.0 MISCELLANEOUS

36.1 Amendments

Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term "this Agreement" shall include future amendments, modifications, and supplements.

36.2 Authority

Each person whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement and that the Party has full power and authority to execute and deliver this Agreement and to perform the obligation hereunder.

36.3 Binding Effect

This Agreement shall be binding on and inure to the benefits of the respective successors and permitted assigns of the Parties.

36.4 Compliance with Laws and Regulations

Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance as described in this Agreement.

36.5 Consent

Where consent, approval, or mutual agreement is required of Party, it shall not be unreasonably withheld or delayed.

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36.6 Entire Agreement

This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied, have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

36.7 Expenses

Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

36.8 Resolution of Disputes

Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of this Agreement or as to the proper implementation of this Agreement, the Parties will petition the Commission or the FCC for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission or the FCC concerning this Agreement.

36.9 Governing Law

This Agreement is subject to the Act, and the effective rules and regulations promulgated pursuant to the Act, and any other applicable federal law, as well as the rules of the Commission, and shall be further governed by and construed in accordance with the domestic laws of the state of performance without regard to its conflicts of law principles.

36.10 Headings

The headings in this Agreement are inserted for convenience and identification only and shall not be considered in the interpretation of this

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Agreement.

36.11 Independent Contractor Relationship

The persons provided by each Party to perform services under this Agreement shall be solely that Party's employees and shall be under the sole and exclusive direction and control of that Party. They shall not be considered employees of the other Party for any purpose. Each Party shall remain an independent contractor with respect to the other and shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions and payment of wages. Each Party shall also be responsible for payment of taxes, including federal, state and municipal taxes, chargeable or assessed with respect to its employees, such as Social Security, unemployment, workers' compensation, disability insurance, and federal and state withholding. Each Party shall indemnify the other for any loss, damage, liability, claim, demand, or penalty that may be sustained by reason of its failure to comply with this provision.

36.12 Multiple Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

36.13 No Offer

Submission of this Agreement for examination or signature does not constitute an offer by BST for the provision of the products or services described herein. This Agreement will be effective only upon execution and delivery by both BST and KMC.

36.14 Publicity

Any news release, public announcement, advertising, or any form of publicity pertaining to this Agreement or association of the Parties with respect to provision of the services described in this Agreement shall be subject to prior coordination and review of both BST and KMC.

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36.15 Subcontractors

BST may enter into subcontracts with third parties or affiliates for the performance of any of BST's duties or obligations under this Agreement.

36.16 Regulatory Approval

Each Party agrees to cooperate with the other and with any regulatory agency to obtain regulatory approval. During the term of this Agreement, each Party agrees to continue to cooperate with the other and with any regulatory agency so that the benefits of this Agreement may be achieved. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Commission rejects any portion of this Agreement, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion.

36.17 Trademarks and Trade Names

Except as specifically set out in this Agreement, nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the trademarks, service marks, or trade names of the other for any purpose whatsoever.

36.18 Taxes and Fees

- 36.18.1 Definition** For purposes of this section, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefor.

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36.18.2 Taxes and Fees Imposed Directly on Either Providing Party or Purchasing Party

(a) Taxes and fees imposed on the providing Party, which are not permitted to be passed on by the providing party to its customer, shall be borne and paid by the providing Party.

(b) Taxes and fees imposed on the purchasing party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.

36.18.3 Taxes and Fees Imposed On Purchasing Party But Collected and Remitted By Providing Party

(a) Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.

(b) To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed and the purchasing Party shall remit such taxes when later notified.

(c) If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party shall not bill such taxes or fees to the purchasing Party if and when the purchasing Party provides written certification stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable

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law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings or rulings in any proceeding, protest, or legal challenge, all filings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.

(d) In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for the timely payment and shall be entitled to the benefit of any refund or recovery.

(e) If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon. However, if interest and penalties are due because of lack of timely remittance by the providing Party or because of untimely billing by the providing Party, the providing Party will be responsible for such penalties and interest.

(f) Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

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(g) Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such tax or fee by a taxing authority; such notice to be provided at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

36.18.4 Taxes and Fees Imposed on Providing Party But Passed on To Purchasing Party

(a) Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to the purchasing Party shall be borne by the purchasing Party.

(b) To the extent permitted by applicable law, any such tax and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed and the purchasing Party shall remit such taxes when later notified.

(c) If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee and with respect to whether to contest the imposition of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party shall abide by such determination and pay such taxes or fees to the providing Party. The providing Party shall further retain ultimate

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responsibility for determining whether and how to contest the imposition of such taxes or fees; provided, however, that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense.

(d) In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

(e) If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon. However, if interest and penalties are due because of lack of timely remittance by the providing Party or because of untimely billing by the providing Party, the providing Party will be responsible for such penalties and interest.

(f) Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

(g) Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided at least ten (10) days prior to the date by which a response, protest

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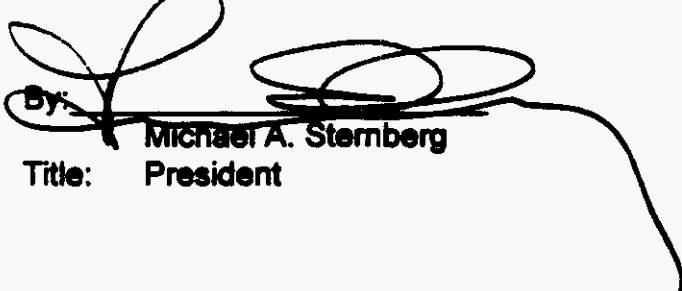
or other appeal must be filed, but no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

- 36.18.5 Taxes and Fees Imposed on the Providing Party.** With respect to any purchase of services, facilities or arrangements, if any tax or fee is imposed by applicable law on the receipts of the providing Party (Receipts Tax (or fee)), which law permits the providing Party to exclude certain receipts received from sales for resale to a public utility, distributor, telephone company, local exchange carrier, telecommunications company or other communications company (Telecommunications company), such exclusion being based solely on the fact that the purchasing Party is also subject to a tax or fee based upon receipts, then the purchasing Party shall (i) provide the providing Party with notice in writing in accordance with Section 34.0 of its intent to pay the Receipts Tax (or fee) and (ii) shall timely pay the receipts tax or fee to the applicable tax authority. If the purchasing Party fails to pay the Receipts Tax as required by this subsection 36.18.5 then, as between the providing Party and the purchasing Party, (i) the purchasing Party shall be liable for any tax or fee imposed on its receipts and (ii) the purchasing Party shall be liable for any interest assessed thereon and any penalty assessed upon the providing Party with respect to such tax or fee by such authority.
- 36.18.6 Mutual Cooperation.** In any contest of a tax or fee by one Party, the other Party shall cooperate fully by timely providing records, testimony and such additional information or assistance as may be reasonably necessary to pursue the contest.
- 36.18.7 Miscellaneous.** This Agreement does not cover any tax or fee which may be imposed on either Party's corporate existence, status or income.

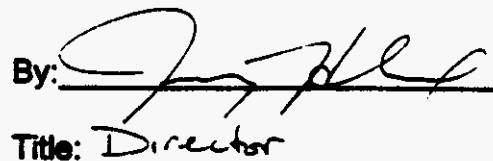
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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this 27th day of February, 1997.

KMC Telecom Inc.

By: 
Title: **President**

BellSouth Telecommunications, Inc.

By: 
Title: **Director**

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Exhibit 1

**Certain Terms as Defined in the Act
as of February 1997**

**(These terms shall be amended to be consistent with
Commission and/or FCC Orders as they may ultimately be adjudicated upon any
Petition for reconsideration or final appeal.) (Page 1 of 3)**

"Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than ten percent (10%).

"Dialing Parity" means that a person that is not an Affiliate of a LEC is able to provide Telecommunications Services in such a manner that Customers have the ability to route automatically, without the use of any access code, their Telecommunications to the Telecommunications Services provider of the Customer's designation from among two (2) or more Telecommunications Services providers (including such LEC).

"Exchange Access" means the offering of access to Telephone Exchange Services or facilities for the purpose of the origination or termination of Telephone Toll Services.

"InterLATA" means Telecommunications between a point located in a local access and transport area and a point located outside such area.

"Local Access and Transport Area" or "LATA" means a contiguous geographic area: (a) established before the date of enactment of the Act by a Bell operating company such that no Exchange Area includes points within more than one (1) metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or (b) established or modified by a Bell operating company after such date of enactment and approved by the FCC.

"Local Exchange Carrier" means any person that is engaged in the provision of Telephone Exchange Service or Exchange Access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile

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service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.

"Network Element" (or "Unbundled Element") means a facility or equipment used in the provision of a Telecommunications Service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a Telecommunications Service.

"Number Portability: means the ability of end users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Communications Act).

"Telecommunications Service" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telephone Exchange Service" means (a) service within a telephone exchange or within a connected system of telephone exchanges within the same exchange area operated to furnish subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the Telephone Exchange Service charge, or (b) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

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"Telephone Toll Service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for Telephone Exchange Service.

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Exhibit 8.0

Reciprocal Compensation and Local Transit Rates

Reciprocal Local Traffic - Local Call Termination Rate

\$0.009 Per Minute of Use

Local (including EAS and EAS-type calls) Call Transit Rate

\$0.0015 Per Minute of Use