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March 23, 2000

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

**Re: Docket No. 000282-TP (KMC Complaint)**

Dear Ms. Bayó:

Enclosed is an original and 15 copies of Answer of BellSouth Telecommunications, Inc. to Complaint of KMC Telecom, Inc., which we ask that you file in the captioned matter.

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

Sincerely,

*E. Earl Edenfield Jr.*

E. Earl Edenfield, Jr. (fw)

Enclosures

cc: All parties of record  
Marshall M. Criser, III  
Nancy B. White  
R. Douglas Lackey

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**CERTIFICATE OF SERVICE  
DOCKET NO. 000282-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 23rd day of March, 2000 to the following:

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E. Earl Edenfield, Jr. (A)

ORIGINAL

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

Complaint of KMC Telecom, Inc. for Enforcement of its ) Docket No. 000282-TP  
Interconnection Agreement with BellSouth )  
Telecommunications, Inc. and Request for Relief. )  
\_\_\_\_\_ ) Filed: March 23, 2000

**ANSWER OF BELL SOUTH TELECOMMUNICATIONS, INC.  
TO COMPLAINT OF KMC TELECOM, INC.**

BellSouth Telecommunications, Inc. ("BellSouth"), files its Answer to the Complaint of KMC Telecom, Inc. ("KMC"), and says:

GENERAL RESPONSE

In its Complaint, KMC seeks a ruling that dial-up access to the Internet through an Internet Service Provider ("ISP") should qualify for reciprocal compensation under the terms of the BellSouth/KMC Interconnection Agreement when an ISP customer who is also a BellSouth end-user accesses the Internet through an ISP served by KMC. There is no legal, factual or policy basis for such a ruling because, as the Federal Communications Commission ("FCC") confirmed, such traffic does not terminate on KMC's network.<sup>1</sup> Indeed, the FCC found that such traffic is largely interstate, not local. As a result, it is clear that dial-up access to the Internet through an ISP is not subject to the reciprocal compensation requirements of the BellSouth/KMC Interconnection Agreement. Accordingly, KMC is not entitled to the relief it seeks in this

<sup>1</sup> Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, *In the Matter of Implementation of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 99-68; *Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, (Rel. February 26, 1999) ("FCC's Declaratory Ruling").

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proceeding, and the Florida Public Service Commission (“Commission”) should dismiss the Complaint.

RESPONSE TO SPECIFIC ALLEGATIONS

BellSouth responds to the numbered paragraphs in KMC’s Complaint as follows:

1. To the extent a response is required, BellSouth admits the allegations in paragraph 1 of the Complaint.
2. No response to paragraph 2 of the Complaint is required. However, future correspondence and pleadings regarding this matter should be directed to the undersigned counsel of record.
3. BellSouth lacks information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint. Therefore, those allegations are denied.
4. BellSouth admits the allegations in paragraph 4 of the Complaint.
5. The provisions of the 1996 Act speak for themselves. BellSouth denies the remaining allegations in paragraph 5 of the Complaint.
6. The provisions of the BellSouth/KMC Interconnection Agreement speak for themselves. BellSouth denies the remaining allegations in paragraph 6 of the Complaint.
7. The provisions of the 1996 Act speak for themselves. Further, the FCC expressly ruled that the reciprocal compensation provisions of Section 251(b)(5) of the 1996 Act do not apply to ISP-bound traffic<sup>2</sup>. BellSouth denies the remaining allegations in paragraph 7 of the Complaint.
8. The provisions of the BellSouth/KMC Interconnection Agreement speak for themselves. BellSouth lacks information sufficient to for a belief as to the truth of the allegation that the

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<sup>2</sup> *FCC’s Declaratory Ruling*, at FN 87.

BellSouth/KMC Interconnection Agreement governs all of KMC's operations in BellSouth's territory. Therefore, that allegation is denied. Further, KMC did not opt into the MFS/BellSouth Interconnection Agreement under §252(i) of the 1996 Act. To the contrary, the BellSouth/KMC Interconnection Agreement is merely based on the terms of the MFS/BellSouth Interconnection Agreement. BellSouth admits the remaining allegations in paragraph 8 of the Complaint.

9. The provisions of the BellSouth/KMC Interconnection Agreement speak for themselves. BellSouth denies the remaining allegations in paragraph 9 of the Complaint.

10. BellSouth admits that the Commission has general jurisdiction to interpret the provisions of interconnection agreements approved by the Commission, so long as the Commission does not attempt to regulate subject matters preempted by federal jurisdiction. The referenced Florida statutory authority speaks for itself. BellSouth denies the remaining allegations in paragraph 10 of the Complaint.

11. The Eighth Circuit Court of Appeals decision in *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8<sup>th</sup> Cir. 1997), *rev'd in part and remanded on other grounds sub nom, AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999), speaks for itself. BellSouth denies the remaining allegations in paragraph 11 of the Complaint.

12. The *FCC's Declaratory Ruling* speaks for itself. Notwithstanding, the referenced portions of the *FCC's Declaratory Ruling* address inter-carrier compensation on a going-forward basis (such as a §252 arbitration), not reciprocal compensation in the context of a complaint proceeding on an existing interconnection agreement. Thus, the references are not applicable to this proceeding. BellSouth denies the remaining allegations in paragraph 12 of the Complaint.

13. KMC's attempt to obtain reciprocal compensation for ISP-bound traffic is in no way consistent with the 1996 Act, the *FCC's Declaratory Ruling*, or the express provisions of the BellSouth/KMC Interconnection Agreement, all of which militate against the recovery of reciprocal compensation for ISP-bound traffic. The provisions of the BellSouth/KMC Interconnection Agreement speak for themselves. BellSouth denies the remaining allegations in paragraph 13 of the Complaint.

14. BellSouth denies the allegations in paragraph 14 of the Complaint. Further, ISP-bound traffic does not "terminate" at an enhanced service provider or ISP and, therefore, is not local traffic under the law or the BellSouth/KMC Interconnection Agreement.

15. The provisions of the BellSouth/KMC Interconnection Agreement speak for themselves. BellSouth denies the remaining allegations in paragraph 15 of the Complaint.

16. The provisions of the BellSouth/KMC Interconnection Agreement speak for themselves. BellSouth denies the remaining allegations in paragraph 16 of the Complaint.

17. The provisions of the BellSouth/KMC Interconnection Agreement speak for themselves. BellSouth denies the remaining allegations in paragraph 17 of the Complaint.

18. BellSouth lacks information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint. Therefore, those allegations are denied.

19. The referenced Florida statutory authority speaks for itself. BellSouth denies the remaining allegations in paragraph 19 of the Complaint.

20. BellSouth admits that it provides local exchange service in Florida. The provisions of the BellSouth/KMC Interconnection Agreement speak for themselves. BellSouth lacks information sufficient to form a belief as to the truth of the remaining allegations in paragraph 20 of the Complaint. Therefore, those allegations are denied.

21. The provisions of the BellSouth/KMC Interconnection Agreement speak for themselves. Further, the definition of local traffic in the BellSouth/KMC Interconnection Agreement requires reciprocal compensation for local traffic (*i.e.* traffic that originates and terminates in a local calling area) thereby excluding ISP-bound traffic, which is interstate traffic that does not originate and terminate in a local calling area. BellSouth denies the remaining allegations in paragraph 21 of the Complaint.

22. BellSouth admits that it is interconnected with and exchanges traffic with KMC. The provisions of the BellSouth/KMC Interconnection Agreement speak for themselves. BellSouth denies the remaining allegations in paragraph 22 of the Complaint.

23. BellSouth admits that it received invoices from KMC. BellSouth denies that it owes reciprocal compensation and late-payment charges to KMC. Further, the invoices submitted to BellSouth by KMC seek, inappropriately, to recover reciprocal compensation for interstate, ISP-bound traffic. BellSouth denies the remaining allegations in paragraph 23 of the Complaint.

24. BellSouth admits that it paid a portion of the invoices submitted by KMC to BellSouth. Those payments were for local traffic only, as required and defined by the BellSouth/KMC Interconnection Agreement. BellSouth has paid all amounts due and owing under the provisions of the BellSouth/KMC Interconnection Agreement. BellSouth denies the remaining allegations in paragraph 24 of the Complaint.

25. BellSouth denies the allegations in paragraph 25 of the Complaint.

26. BellSouth denies the allegations in paragraph 26 of the Complaint. Further, Commission interpretations of other interconnection agreements are not binding or authoritative as to the BellSouth/KMC Interconnection Agreement. Although KMC cites a litany of cases, it conveniently fails to mention that the Louisiana Public Service Commission previously

considered a claim by KMC for reciprocal compensation. Under the same BellSouth/KMC Interconnection Agreement at issue here, the Louisiana Public Service Commission rejected KMC's claim for reciprocal compensation.

27. Order No. PSC-98-1216-FOF-TP, entered in FPSC Docket No. 971478-TP speaks for itself. Further, any Commission interpretation of the MFS Agreement is not binding or authoritative as to the BellSouth/KMC Interconnection Agreement. BellSouth denies the remaining allegations in paragraph 27 of the Complaint.

28. To the extent a response is required, BellSouth denies that KMC is entitled to any of the relief that it seeks in the *ad damnum* clause, or elsewhere, in the Complaint.

29. Any allegation not specifically admitted herein is denied.

WHEREFORE, BellSouth respectfully requests that the Commission deny the relief sought by KMC, enter judgment in favor of BellSouth, dismiss the Complaint, and grant any other relief deemed appropriate by the Commission.

Respectfully submitted this 23<sup>rd</sup> day of March 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.



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