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January 21, 2004

BY HAND DELIVERY
Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 030852-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of KMC Telecom III, LLC are an original and fifteen copies of the Rebuttal Testimony of Marva Brown Johnson on behalf of KMC Telecom III, LLC in the above-referenced docket.

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 yours,

Floyd R. Self

FRS/amb
Enclosures
cc: Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Implementation of Requirements Arising From Federal Communications Commission Triennial UNE Review: For DS1, DS3, and Dark Fiber Loops And Route-Specific Review for DS1, DS3, And Dark Fiber Transport	)	Docket No.: 030852-TP Filed: January 21, 2004

REBUTTAL TESTIMONY OF

MARVA BROWN JOHNSON

ON BEHALF OF

KMC TELECOM III, LLC

1

Q. PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS ADDRESS.

A. My name is Marva Brown Johnson. I am employed by KMC Telecom Holdings, Inc. ("KMC Holdings"), parent company of KMC Telecom III, LLC as Senior Regulatory Counsel. My business address is 1755 North Brown Road, Lawrenceville, Georgia 30043.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING ?

A. I am testifying on behalf of KMC Telecom III, LLC ("KMC").

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. I hold a Bachelors of Science in Business Administration (BSBA), with a concentration in Accounting, from Georgetown University; a Masters in Business Administration from Emory University's Goizuetta School of Business; and a Juris Doctor from Georgia State University. I admitted to practice law in the State of Georgia.

I have been employed with KMC since September 2000. I joined KMC as the Director of ILEC Compliance, I was later promoted to Senior Counsel and this is the position that I hold today. I am also an officer of the company and I currently serve in the capacity of Assistant Secretary. I manage the organization that is responsible for federal regulatory and legislative matters, state regulatory proceedings and complaints, and local rights-of-way issues.

Prior to joining KMC as the Director of ILEC Compliance, I had over eight years of telecommunications-related experience in various areas including, consulting, accounting, and marketing. From 1990 through 1993, I worked as an auditor for Arthur Andersen & Company. My assignments at Arthur Andersen spanned a wide range of industries, including telecommunications. From 1994 through 1995, I was an internal auditor for BellSouth. In that capacity, I conducted both financial and operations audits. The purpose of those audits was to ensure compliance with regulatory laws as well as internal business objectives and policies. From 1995 through September 2000, I served in various capacities in MCI Communications's product development and marketing organizations, including as Product Development – Project Manager, Manager - Local Services Product Development, and Acting Executive Manager for Product Integration. At MCI, I assisted in establishing the company's local product offering for business customers, oversaw the development and implementation of billing software initiatives, and helped integrate various regulatory requirements into MCI's products, business processes, and systems.

Q. HAVE YOU TESTIFIED BEFORE THE FLORIDA OR OTHER STATE PUBLIC SERVICE COMMISSIONS?

A. Yes. I have testified before the North Carolina Utilities Commission on various local interconnection and competition issues, including reciprocal compensation. I also have testified in a AAA arbitration hearing.

Q. PLEASE DESCRIBE THE TYPE OF SERVICE KMC PROVIDES IN FLORIDA.

A. KMC is a facilities-based telecommunications service provider that also provides service to customers through unbundled network elements leased from ILECs. KMC operates in BellSouth's (Daytona Beach, Pensacola, and Melbourne), Verizon's (Greater Pinellas and Sarasota), and Sprint's (Tallahassee and Fort Meyers) territories in Florida. KMC provides a wide variety of integrated voice, data and internet services to enterprises in the state of Florida.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. In its *Triennial Review Order* ("*TRO*"),[1] the FCC determined that incumbent local exchange carriers ("ILECs") must provide competitive carriers with unbundled access to high-capacity loops and dedicated transport. Specifically, the FCC made a national finding that CLECs are impaired in their ability to offer service without access to DS-1 loops, DS-3 loops (up to two DS3s per location) and dark fiber loops (collectively, "high capacity loops"). ¶ 202.[2] The FCC also found that CLECs are impaired on a national basis without access to DS-1, DS-3 and dark fiber dedicated transport. ¶ 359. Although the FCC found impairment, it has

[1] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98); Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147)*, FCC No. 03-36 (rel. Aug. 21, 2003).

[2] All "¶" citations in my testimony are to the TRO, unless otherwise noted.

authorized state commissions to evaluate specific claims that an ILEC might advance, on the basis of specific criteria to be assessed at a particular location (for loops) or on a particular route (for transport), which show competing carriers are not impaired without unbundled access to those elements.

The purpose of my testimony is to respond to BellSouth's and Verizon's claims that KMC is a trigger candidate at certain customer locations and on particular dedicated transport routes. My testimony is divided into two parts. First, I will discuss BellSouth's claim that dedicated transport should be "de-listed" on certain routes in Florida. In this part, I explain that *none* of KMC's transport facilities in Florida are eligible to be counted toward satisfaction of the triggers. In the second part of my testimony, I will discuss BellSouth's claims that enterprise loops should be de-listed at certain locations in Florida. I will explain that only a handful of KMC's loop facilities in Florida can be counted toward satisfaction of one of the triggers (the "self-provisioning" trigger), and that none of KMC's loop facilities in Florida can be counted toward satisfaction of the other trigger, the "wholesale facilities" trigger.

I. DEDICATED TRANSPORT – ISSUES 7, 9, 11, 14, AND 16

Q. HOW IS THIS SECTION OF YOUR TESTIMONY ORGANIZED?

A. As explained in the Direct Testimony of Gary Ball, BellSouth argues that the triggers for de-listing DS1, DS3 and dark fiber transport have been satisfied on hundreds of routes in Florida, and that unbundled access to

dedicated transport should therefore be eliminated on those routes. In this rebuttal testimony, I will not elaborate on the appropriate interpretation of the triggers, which is addressed in the Direct Testimony of Gary Ball. This testimony will explain how the triggers were applied in conducting KMC's analysis as to whether specific KMC routes and customer locations satisfied the triggers. Then I will explain the analysis that this Commission should undertake to determine if the dedicated transport "triggers" have been met by KMC – *i.e.*, that certain conditions exist on a specific transport route that appear to indicate that a CLEC is not impaired without access to UNE dedicated transport at that route. The Commission may lift the unbundling obligation for dedicated transport between specific wire centers, at that specific transport capacity if -- and only if -- the triggers are met. Finally, I will specifically address BellSouth's claims with respect to the extent to which BellSouth alleges that KMC is a trigger candidate for routes in Florida. In fact, none of *KMC's* transport facilities in Florida can be counted toward satisfaction of any of the FCC's triggers, because KMC's network is not configured or designed to carry traffic between BellSouth central offices.

Q. WHAT IS THE FCC'S DEFINITION OF "DEDICATED TRANSPORT" AS THE TERM WAS USED IN THE *TRO* AND AS IT IS PERTINENT TO THE COMMISSION'S DELIBERATIONS IN THIS IMPAIRMENT PROCEEDING?

A. For purposes of this impairment proceeding, "dedicated transport" has a narrower meaning than industry usage. In the *TRO*, the FCC redefined dedicated transport as "transmission facilities connecting incumbent LEC

switches and wire centers within a LATA." ¶ 365 (footnote omitted). This new definition explicitly excludes "backhaul" facilities between an ILEC wire center and a CLEC location, such as the CLEC switch, which CLECs use to aggregate and "backhaul" their traffic to their switch. Backhaul facilities had been included in the FCC's definition of dedicated transport prior to the *TRO*. This definitional change means that "only those transmission facilities *within* an incumbent LEC's transport network, that is, the transmission facilities between incumbent LEC switches," fall within the incumbent LEC's unbundling obligation. ¶ 366 (emphasis in original).

Q. WHAT WAS THE FCC'S FINDING WITH RESPECT TO DEDICATED TRANSPORT?

A. After extended proceedings and after considering an enormous factual record, the FCC determined that competitive carriers are impaired nationwide in their ability to provide local telecommunications services without access to dedicated transport, assessed on a route-specific, capacity–specific basis and subject to defined limits. ¶¶ 359, 381-93. The FCC assessed impairment on a capacity basis "[b]ecause a carrier using higher capacity levels of transport has a greater incentive and broader revenue base to support the self-provisioning of transport facilities." ¶ 377 (footnote omitted).

It is useful to summarize these impairment characteristics at the outset, because these are the factors that the trigger analysis must show have been overcome.

Q. WHY DID THE FCC DELEGATE TO STATE COMMISSIONS THE TASK OF ADDUCING EVIDENCE OF A LACK OF IMPAIRMENT WITH RESPECT TO DEDICATED TRANSPORT ON A GRANULAR ROUTE AND CAPACITY-SPECIFIC BASIS?

A. The purpose of this proceeding is to focus on the services where the FCC has already made a finding of impairment, as addressed in the Direct Testimony of Gary Ball, and to identify those relatively rare instances in which, because of special circumstances, competitive carriers would not be impaired notwithstanding the relative lack of traffic on such routes. The FCC concluded that the record before it did not permit it to determine where, if anywhere, such routes might exist. The FCC thus delegated to the states the task of determining, upon a petition from an ILEC, whether that ILEC could be relieved of its obligation to provide unbundled access to its facilities for a given route.

Q. WHO HAS THE BURDEN OF PERSUASION WITH EVIDENCE OF LACK OF IMPAIRMENT?

A. Under the *TRO*, BellSouth bears the burden of introducing evidence into the record showing lack of impairment. The Commission is required to make a determination only for those routes for which BellSouth has presented "relevant evidence" that competing carriers would not be impaired if access to UNE dedicated transport were eliminated. In other words, the FCC's impairment findings for dedicated transport are controlling unless BellSouth has introduced evidence that meets the requirements set forth in the *TRO* for demonstrating non-impairment on a route-specific basis. BellSouth's petition must be denied unless it meets the heavy burden of providing evidence sufficient to overcome the

affirmative findings by the FCC of impairment and to enable the Commission to make an affirmative finding of non-impairment.

A. Self-Provisioned Transport Trigger – Issues 9 and 14

Q. WHAT TRIGGERS FOR DEDICATED TRANSPORT DID THE FCC ADOPT?

A. The FCC adopted two triggers – a "Self-Provisioning Trigger," and a "Wholesale Trigger."

Q. WHAT IS THE DIFFERENCE BETWEEN THE SELF-PROVISIONING TRIGGER AND THE WHOLESALE TRIGGER?

A. The Self-Provisioning Trigger measures the extent to which competitive carriers have deployed transport facilities along a given route for their own use. To satisfy the Self-Provisioning Trigger, BellSouth must demonstrate that three or more unaffiliated and competing carriers have each deployed transport facilities on that route. ¶ 405. To qualify as "trigger-eligible," each self-provisioned facility on the route must be operationally ready to provide transport between specific ILEC central office pairs. ¶ 406.

The Wholesale Trigger, by contrast, measures the extent to which competing carriers have deployed transport facilities along a given route that are available to other competing carriers at wholesale. To satisfy the Wholesale Trigger, BellSouth must show that "two or more competing carriers, not affiliated with each other or the ILEC, offer wholesale transport service completing that route." ¶ 412.

Q. WHAT KEY CRITERIA DID KMC ANALYZE IN DETERMINING WHETHER KMC SATISFIED THE SELF-PROVISIONING TRIGGER?

A. The FCC has identified at least five key criteria for determining whether the Self-Provisioning Trigger has been satisfied. As explained in the Direct Testimony of Gary Ball, BellSouth and Verizon must satisfy *each* of these criteria in order to satisfy the trigger.

(1) Route-Specific Review - The FCC requires that the transport trigger analysis must be performed on a route-specific basis. ¶ 401. It defines a transport route as a complete "connection between [ILEC] wire center or switch 'A' and [ILEC] wire center or switch 'Z.'" ¶ 401. The FCC has explained that "if, on the incumbent LEC's network, a transport circuit from 'A' to 'Z' passes through an intermediate wire center 'X,' the competitive providers *must offer service connecting wire centers 'A' and 'Z,'* but do not have to mirror the network path" through X. ¶ 401 (emphasis added). Although the FCC placed no defined limitation on the number of hops (i.e. passes through an office and/or intermediate electronics) a transport circuit might make between end points and still be considered a route between 'A' and 'Z', transport circuits offered by a CLEC that make many hops may not offer the same quality of service as ILEC transport with fewer (or no) hops. The introduction of every intermediate office or additional electronic device between points 'A' and 'Z' adds more potential points of failure and potential degradation of service. The question, then, is whether the CLEC identified as a trigger candidate self-provides dedicated transport between the two central offices

at issue (regardless of whether the CLEC's transport circuit follows the same path as the ILEC's circuit). *See* ¶ 365.

The FCC has emphasized, however, that a carrier does not qualify under the triggers unless it provides transport for the *entire* route between A and Z. The FCC specifically rejected ILEC claims that competitors could be forced to use a "daisy chain" of individual links, managed by multiple providers, between intervening wire centers. ¶ 402. Thus, any evaluation of impairment with respect to transport has to focus, first and foremost, on whether three other providers are each providing transport services that provide a complete connection between the two ILEC wire centers at issue.

Accordingly, it should be self-evident that a SONET ring that passes by wire center "A", but is not *connected* to ILEC wire center "A", cannot count as a trigger for transport routes including ILEC wire center "A." Likewise, a "hub-and-spoke" arrangement including a SONET ring that collects traffic from ILEC wire centers "A" and "Z," but carries that traffic solely to a CLEC point of presence and not to the other ILEC wire center, would not qualify as a trigger. It should also be self-evident that an alleged transport route between two ILEC wire centers that passes through a CLEC's switch does not qualify as a dedicated transport route, because the traffic on that route is being switched by equipment that is part of the CLEC's network.

(2) Operational Readiness - To be counted as trigger-eligible, a self-provisioned facility "must be operationally ready to provide transport into or out of an incumbent LEC central office." ¶ 406.

(3) Capacity Levels – The trigger analysis must be performed for each particular capacity of transport (*i.e.*, DS-3 or dark fiber).

(4) Providers Must Own the Facilities. The unaffiliated carriers must own the transport facilities.

(5) Providers Must be Unaffiliated – Alternative self-providers of transport must be unaffiliated.

B. Wholesale Transport Facilities Trigger: Key Criteria – Issues 7, 8, 11, 12, 16, and 17

Q. WHAT ELEMENTS OF THE KEY CRITERIA FOR THE WHOLESALE TRIGGER WERE MOST CRITICAL TO KMC'S TRIGGER ANALYSIS?

A. As explained in the Direct Testimony of Gary Ball, the carrier must be operationally ready and willing to sell the particular capacity of transport wholesale along the route in question. In other words, a carrier's wholesale transport facilities do not count toward satisfaction of the trigger (1) if the transport facility is not operationally ready and immediately available, or (2) if the carrier does not generally offer access to other carriers. ¶ 414.

Operational Readiness. With respect to operational readiness, the FCC emphasized the need for "safeguards against counting alternative fiber providers that may offer service, but do not yet have their facilities terminated or collocated in the incumbent LEC central office, or are

otherwise unable to immediately provision service along the route." *Id.* (emphasis added). If the purported wholesaler cannot connect with CLEC customers, for example, through CLEC-to-CLEC cross-connects at the relevant central offices, then the wholesaler would not be operationally ready to provide services to all CLECs. Similarly, if CLECs cannot terminate their UNE loops directly with the wholesaler, then the wholesaler is not operationally ready to provide a real alternative to ILEC transport.

The FCC has also made clear that a wholesale provider would not qualify under the trigger if the wholesale provider's facilities terminate only in a collocation arrangement located at an incumbent LEC's premises. Rather, in addition to such collocation in an ILEC's premises, the wholesale provider's facilities must also terminate "in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises." 47 C.F.R. 51.319(e)(1)(ii)(C) (FCC rules for DS-1 transport); see also § 51.319(e)(2)(B)(3) (same for DS-3 transport); § 51.319(e)(3)(B)(3) (same for dark fiber transport). The requirement of additional points of termination at each end of the route helps to ensure that the ostensible wholesaler's facilities are accessible to those CLECs that are not collocated at the ILEC premises.

Lastly, in setting the trigger at three competitive facilities, the FCC specifically acknowledged the need to allow for the possibility that some network owners may not be interested in providing wholesale services in

contrast with the wholesale availability trigger which counts only *actual* wholesalers. ¶ 407 (emphasis added). In doing so, the FCC specifically acknowledged KMC's lack of interest in providing wholesale transport services on its network. ¶ 407 n. 1260

Broadly Offered. The carrier must also offer its wholesale services broadly. Thus, for example, a carrier that sells transport to only one other company and does not make its services widely available would not qualify as a wholesaler for purposes of the trigger. ¶ 414.

Likewise, a wholesaler's dedicated transport is not operationally ready or widely available if the wholesaler either lacks the operations support systems needed to support CLEC use, or lacks the collocation arrangements necessary to ensure that CLECs can readily cross-connect their facilities in the applicable ILEC end-offices that define the transport route. *See., e.g.*, ¶¶ 373, 414. In other words, for a wholesale carrier to qualify for purposes of the Wholesale Trigger, other CLECs must be able to access the alternative facilities by cross-connecting their collocations to the wholesaler's collocation (or to a fiber termination panel) "in a reasonable and non-discriminatory manner." *See* ¶ 414 n.1279. In particular, the ostensible offer of wholesale transport must satisfy the FCC's collocation rules, which clarify "nondiscriminatory principles including the right to interconnect with other collocated competing carriers by cross-connection." *Id.* A carrier that does not offer cross-connection that satisfies these requirements does not qualify as a

wholesaler for purposes of the trigger, because "the wholesale trigger counts only wholesale offerings that are readily available." *Id.*.

C. KMC's Transport Does Not Count Toward the Self-Provisioning or the Wholesale Trigger – Issues 7, 9, 11, 14, and 16

Q. HAS BELLSOUTH OR VERIZON IDENTIFIED KMC AS A TRANSPORT PROVIDER FOR PURPOSES OF EITHER THE SELF-PROVISIONING TRIGGER OR THE WHOLESALE TRIGGER IN FLORIDA?

A. Yes. BellSouth identified KMC as a either a wholesale provider or a self-provisioner on six routes in Florida. Verizon also identified KMC as a wholesale transport provider on certain routes. *See* Exhibit ___ (MBJ-1).

Q. DOES ANY OF KMC'S TRANSPORT COUNT TOWARD SATISFACTION OF THE SELF-PROVISIONING OR WHOLESALE TRIGGERS?

A. No. BellSouth has claimed that KMC has transport facilities that count toward both the Self-Provisioning Trigger and the Wholesale Trigger, but those claims are incorrect. BellSouth's methodology apparently is simply to assume that whenever a competitive carrier is collocated in two of its central offices within a local access transport area (LATA), that carrier has the capability to self-provide transport between the specified BellSouth wire centers. In reality, however, KMC does not self-provide transport between any two BellSouth central offices in Florida, nor does it offer such transport to others on a wholesale basis. KMC's transport facilities are designed and used only to carry traffic between a single BellSouth central office and the KMC node.

Q: DESCRIBE KMC'S TRANSPORT ARCHITECTURE.

A The KMC network is a SONET ring backbone architecture. KMC has deployed its own transport facilities and established collocation in certain BellSouth central offices, typically three, but each collocation is on a separate pair of fibers and configured as a two node ring, with one node at the KMC switch and the other at the interconnection point. This architecture is designed and engineered to: (1) access unbundled network elements to extend KMC services to KMC's customers; (2) interconnect KMC and the ILEC's networks for the reciprocal exchange of traffic between the ILEC and KMC for termination of traffic the PSTN; and (3) transport traffic from the KMC switch to various PSTN, IXC, and customer interconnections. It was not designed or intended to transport traffic *between ILEC collocations*. This architecture is essentially a hub-and-spoke arrangement; traffic is carried to and from individual collocations and the KMC node; but not from collocation to collocation. As such it was engineered and sized based on the KMC business model, which did not contemplate a wholesale loop provisioning service offering. If KMC needs to carry traffic between two collocations, it purchases that interoffice transport from BellSouth. A diagram illustrating KMC's network architecture is attached as Exhibit ___ (MJB-2).

Q: HOW WOULD KMC HAVE TO CHANGE ITS NETWORK IN ORDER TO PROVIDE TRANSPORT FROM ONE BELLSOUTH CENTRAL OFFICE TO ANOTHER?

A. KMC would have to undertake extensive changes to its network including the redesign and upgrade of the existing transport network including

increasing capacity requirements at both nodes on each ring. The electronics in each collocation are sized only to support KMC's current business model, which is limited to carrying traffic from an ILEC collocation to KMC's node. If KMC wanted to provide transport between ILEC collocations, it would need to perform substantial upgrades to the electronics (to increase bandwidth) at all ILEC collocations and at the KMC node. In addition, there would be an impact on the Digital Access Cross-connect System ("DACS") to distribute DS1 level traffic to ILEC end office destinations. The DACS is a high-speed data channel switch. Separate and specific instructions provide connectivity between circuits and end point destinations. In KMC's network, the DACS directs traffic that does not require switching between end point destinations using various transport equipment and sonet rings and traffic that does require switching to KMC's switch. For example, under KMC's current network configuration, in order to provide transport between two ILEC wire centers, the following would have to occur: (1) transport from the A location, the ILEC wire center, would interconnect at the B location, KMC's node (specifically, the DACS); (2) KMC's DACS would then re-direct the transport to a separate sonet ring at KMC's node, location C, for termination at location Z, the destination ILEC wire center; and (3) the reverse would apply for traffic originating at ILEC wire center Z. The additional network functions required of the DACS and sonet rings is required because KMC does not have a direct path between ILEC wire

center A and ILEC wire center Z. Because KMC's network deployment was not engineered to specifically provide for transport between ILEC wire center A and ILEC wire center Z KMC would be required to access additional capital to support reconfiguring the network, including any upgrading the DACS.

Finally, upgrading for wholesale transport services would drive the costly expansion of space and power at the interconnection node to accommodate additional electronics in the ILEC or IXC central office collocation or at a customer building. To support these upgrades, KMC would also be required to expand its collocation spaces, which would also be very costly and would take a minimum of 90 to 120 days to deploy and an additional 60 to 90 days to complete the network cutover. First, KMC would have complete initiate collocation augmentation applications with the relevant ILECs. The collocation application process is expensive and subject to lengthy timelines. In addition to the subsequent application fees, the ILEC would levy substantial charges for engineering, space, power, and circuit facility assignments ("CFA"). KMC would also have to incur increased costs for network monitoring and surveillance demands. Although KMC could perhaps re-architect the network to place all the ILEC nodes onto one ring in an effort to minimize the electronics required at the KMC node, this too would require extensive work including a cutover of all existing ILEC rings onto the new facility, which would require extensive re-splicing in our backbone and a large cutover project.

BellSouth, on the other hand, designed and deployed its network with inter-office transport as an integral part of the plan. Its offices subtend a tandem which requires inter-office connectivity, while KMC's tandem functionality is achieved by the geographical deployment of its fiber. In BellSouth's network, inter-office transport is part of the design to provide alternate paths between offices and avoid tandem overload and growth. KMC would have to incur punitive costs to reconfigure its network to provide such functionality. Indeed, KMC would literally have to change its entire business plan before it undertook such changes, because the cost of these upgrades would be prohibitive unless the proposal was supported by a *commitment* to the transport business that justified the change in business strategy and design.

Q: DO KMC'S TRANSPORT FACILITIES COUNT TOWARD SATISFACTION OF THE WHOLESALE TRIGGER?

A. No. For the reasons I just explained, KMC does not even provide transport between ILEC central offices to itself; it certainly does not offer such transport at wholesale to other providers. BellSouth's methodology for determining whether carriers satisfy the Wholesale Trigger is simply to *assume* that if a carrier offers any wholesale services at all, it must be at least willing to offer interoffice transport at wholesale. See Padgett Testimony at 9-10, 19-20. Indeed, BellSouth *assumes* that simply because a CLEC generally provides information on a website or in advertising material about DS1 and DS3 services it offers (subject to various

conditions and limitations) at retail or wholesale, that this is granular evidence that the CLEC is operationally ready to provide dedicated transport on each of specific routes, at each of the specific capacities, and that the transport is operationally ready on a widely available basis, as the *TRO* rules require. *Id.* BellSouth cannot escape its obligation to demonstrate non-impairment on specific routes at specific capacities by simply making generalized assumptions, and then attempt to shift the burden onto the CLECs to respond on a route and capacity-specific basis.

With respect to KMC (and likely many other carriers), BellSouth's assumptions are incorrect. While KMC may sell some capacity on its network at wholesale to providers who want their traffic carried from an ILEC central office to the KMC node or to an IXC point of presence, KMC does not offer any provider transport *between* ILEC central offices at wholesale. Indeed, KMC generally operates its transport facilities near capacity and generally does not offer transport to competitive LECs at wholesale.

II. ENTERPRISE LOOPS – ISSUES 1, 2, 3, AND 5

Q. HOW IS THIS SECTION OF YOUR TESTIMONY ORGANIZED?

A. BellSouth argues that the triggers for de-listing DS1, DS3 and dark fiber enterprise loops have been satisfied at hundreds of customer locations in Florida, and that unbundled access to enterprise loops should therefore be eliminated on those routes. In this section, I will first identify the specific criteria that KMC used in analyzing whether KMC's loops satisfied the

trigger requirements. I will then address BellSouth's claims with respect to the extent to which BellSouth alleges that KMC is a trigger candidate for customer locations in Florida. Although KMC has a handful of enterprise loops that would count toward satisfaction of the Self-Provisioning Trigger, KMC has no loops that would count toward satisfaction of the Wholesale Trigger.

A. Overview of the Loop Triggers

Q. WHAT TRIGGERS DID THE FCC ESTABLISH FOR ENTERPRISE LOOPS?

A. As explained in the Direct Testimony of Gary Ball, the FCC established two triggers applicable to high capacity loops: a Self-Provisioning Trigger and a Wholesale Trigger. The Self-Provisioning Trigger requires BellSouth to identify customer locations where two independent CLECs have already demonstrated, through their own self-provisioning of loops to that location, that it is feasible to self-provision the high capacity facilities that would otherwise be available as UNEs. The self-provisioning loop trigger applies to DS3 and dark fiber loops, but not to DS1 loops, because the FCC found "little record evidence demonstrating that carriers construct facilities to serve customers *exclusively* at the DS1 level, as well as the lack of economic evidence showing that such self-deployment is possible." ¶ 334 (emphasis in original).

As also explained in the Testimony of Gary Ball, the Wholesale Trigger requires BellSouth to identify customer locations where competing carriers can offer service using loops obtained from wholesale

suppliers, and thus do not need to depend either on obtaining UNEs from the incumbent LEC or on their own construction. The wholesale facilities trigger applies to DS1 and DS3 loops. *See* ¶¶ 328, 329, 334, 337, 338.

B. Self-Provisioned Loops Trigger: Key Criteria – Issues 2 and 5

Q: WHAT KEY CRITERIA DID KMC ANALYZE IN DETERMINING WHETHER KMC SATISFIED THE SELF-PROVISIONING TRIGGER FOR ENTERPRISE LOOPS?

A. As addressed in the Direct Testimony of Gary Ball, in addition to the fact that a competitive provider must be unaffiliated and must own the facilities at issue the Self-Provisioning Trigger for loops also has three other important criteria:

Location Specific Review: The trigger analysis must be performed separately for each different customer location. Specifically, the FCC requires that state commissions apply the triggers "on a customer-by-customer location basis." ¶ 328.

Operational Readiness and Access to Customers: The FCC's rule makes clear that the qualifying carrier must be "serving customers via the facilities." 47 C.F.R. § 51.319(a)(5)(A)(1); ¶ 332 (qualifying self-provisioner must have "existing facilities in place serving customers at that location"). For that reason, the FCC's self-provisioning trigger emphasizes the importance of ensuring that any proposed self-provisioner is operationally ready; otherwise, it could not be actually "serving customers" at the customer location under review. *Id.*

Capacity Levels: The self-provisioning trigger for high capacity loops also requires evidence that the two carriers upon which the ILEC

relies have deployed "the specific type of high-capacity loop" for which the ILEC seeks a finding of non-impairment. ¶ 328; *see also id.* at 329 (trigger satisfied only by "facilities at the relevant loop capacity level"); *id.* at 332 (trigger requires evidence of "facilities in place serving customers at that location over the relevant loop capacity level.").

C. Wholesale Facilities Trigger: Key Criteria – Issues 1 and 3

Q. WHAT ARE KEY CRITERIA KMC ANALYZED IN DETERMINING WHETHER KMC SATISFIED THE WHOLESALE TRIGGER FOR ENTERPRISE LOOPS?

A. As explained in the Direct Testimony of Gary Ball, the test for the Wholesale Trigger is whether there are two or more wholesale alternatives to the ILEC's UNE loops. The FCC found that "[w]here competitive LECs have two alternative choices (apart from the incumbent LEC's network) to purchase wholesale high-capacity loops, including intermodal alternatives, at a particular premises, we conclude the impairment does not exist at that location for that type of high-capacity loop." ¶ 337. The wholesale trigger places no importance on *retail services* provided by other carriers, only on competitors' ability to obtain *wholesale elements* from an alternative supplier. To be counted for the wholesale trigger, a wholesaler (like a self-provisioner) must be unaffiliated with either the ILEC or another purported trigger company, and it must offer the "specific type of high capacity loop" in question over its "own facilities." *See* ¶¶ 337-38. The FCC noted that a wholesaler (unlike a self-provisioner) is deemed to satisfy the "own facilities" requirement for dark fiber not only if that carrier has obtained it from the incumbent LEC through an IRU, but

also if that carrier has obtained "on any other lease/purchase basis," including as a UNE. ¶ 337. Thus, the key criteria set forth above for the self-provisioning trigger also apply to the wholesale trigger. This is appropriate, because in some circumstances a wholesaler will also count as a self-provider under the FCC's rules. For example, a carrier unaffiliated with the ILEC that offers CLECs access to loops over its own facilities will qualify as both a self-provider and a wholesaler. In contrast, a carrier that obtains unbundled dark fiber from the ILEC, attaches its own optronics, and then offers wholesale "lit" loop capacity may satisfy the wholesale trigger, but will not satisfy the self-provisioning trigger. ¶ 329 & n. 973. There are also several additional criteria applicable to wholesalers that any wholesaler proposed by the incumbent LEC must satisfy. As detailed in the Direct Testimony of Gary Ball, the following additional criteria apply:

(1) *Equivalent Product Terminating at the ILEC Central Office.* The wholesaler must "offer an equivalent wholesale loop product at a comparable level of capacity, quality, and reliability" as the ILEC. ¶ 337. The FCC also observes that "either intermodal or intramodal facilities" may qualify as owned facilities. ¶ 332. Today, however, only fiber facilities provide carriers with a level of quality comparable to unbundled DS3 and dark fiber loops. Fiber is the only transmission medium that is generally available, reliable and deployed to provide a complete range of telecommunications services to enterprise customers. If the wholesale

facilities that the ILEC proposes to rely upon are of lesser quality than the ILEC's own facilities, or if they are less reliable than, or lack the capacity of, the ILEC's facilities, then any CLEC forced to rely upon them would be impaired in attempting to provide services in competition with the ILEC. Such lesser facilities do not count for purposes of the wholesale trigger.

An "equivalent wholesale loop product" is also one that terminates in the same central office where the ILEC loop serving the same customer premise is available. If it does not – if, for example, the loop terminates at the wholesaler's point of presence – then the CLEC will not have the equivalent ability to access the loop as the ILEC (or as the CLEC would if the UNE is available).

(2) *Access to Entire Building.* The wholesaler must also have "access to the entire multiunit customer premises." ¶337.

(3) *Widely Available.* The wholesaler must offer its loops on "[A] widely available wholesale basis." ¶ 337 The FCC recognized that some carriers may have (or be thought to have) spare capacity at a particular location, and may have even entered into an arrangement to provide some of that spare capacity to another carrier, but may have no intention of making its spare capacity "widely available." *Id.*; *cf.* ¶ 407 n.1260 (giving example). In those circumstances, other competitors cannot, as a practical matter, gain access on a wholesale basis to that alleged wholesaler's loop capacity. Such a wholesaler plainly should not and would not count for

purposes of the trigger. Rather, for a wholesale service to be "widely available," its facilities should be immediately available through contract, tariff, or other standard common carrier arrangement. Mere offers to negotiate or to provide individual rate quotes are insufficient to demonstrate that a wholesale service is widely available.

Finally, a "widely available" service is one that offers other carriers ready operational access. Thus, a wholesaler must have reasonable operations support systems that are ready to provide the pre-ordering, ordering, provisioning, maintenance and repair, and billing support that are vital to the provision of a wholesale service. The wholesaler must be able to provide those operations support services with respect to each of the potential customers at the location in question, and the capacity to serve reasonably foreseeable customer demand. Further, competing providers must be able to cross-connect to the wholesaler's loops at the wholesaler's collocation space in the ILEC central office that is the traditional serving wire center of that customer's premises. Such cross-connections must be available at cost-based rates, and on reasonable terms and conditions. Wholesale facilities that are not readily available for cross-connection in this manner are neither "widely available" nor "an equivalent wholesale loop product at a comparable level of . . . quality" to what the ILEC offers. ¶ 337.

(4) Financial Viability. Finally, the wholesaler must be operationally capable of providing the service for which it is nominated as

a trigger candidate. The incumbent LEC must provide evidence sufficient to demonstrate a "reasonable expectation" that the wholesaler will "continu[e] to provide wholesale loop capacity to that customer location."

(4) *Dark Fiber – Ability to Attach Electronics.* For dark fiber, qualifying facilities must provide each competitor with the ability to attach electronics that permit it to provide service at the level of its choosing. *See* 47 C.F.R. § 51.319(a)(4)(ii)(A).

D. BellSouth's and Verizon's Showings Are Deficient – Issues 1, 2, 3 and 5

Q. DO ANY OF KMC'S ENTERPRISE LOOPS COUNT TOWARD SATISFACTION OF THE SELF-PROVISIONING TRIGGER?

A. KMC recently submitted answers to discovery requests in which it identified the customer locations in Florida in which it has deployed facilities that it is using to serve customers. These KMC customer locations would count toward satisfaction of the self-provisioning trigger.

To the extent that BellSouth is claiming that KMC has operationally ready loop facilities serving customers at any other location in Florida, it is wrong. BellSouth has indicated that, for companies that did not provide discovery responses, it has used data from a company called GeoResults, Inc. to determine customer locations that satisfy the trigger. Padgett Testimony at 6-8. BellSouth has not produced the GeoResults report upon which it relies, does not explain in any detail the methodology used by GeoResults, and has not independently verified the information contained within the GeoResults report. In all events, now

that KMC has provided discovery responses, there is no ground for BellSouth to resort to these alternative measures.

Q. DO ANY OF KMC'S ENTERPRISE LOOPS COUNT TOWARD SATISFACTION OF THE WHOLESALE TRIGGER?

A. No. All of KMC's "loops" terminate at the KMC node – not at the ILEC central office. Accordingly, none of KMC's wholesale facilities meet the definition of a "loop" for purposes of the FCC's rule, because a "loop" by definition must terminate at the ILEC central office. *See* 47 C.F.R. § 51.319(4)(ii) and (5)(1)(B). If this Commission were to "de-list" loops at one of these customer locations, competitive carriers that are collocated in BellSouth's central office and that purchase unbundled loops today could not turn to KMC as a wholesale alternative, because KMC's loop facilities do not terminate in the central office and are not accessible to other carriers as a substitute to BellSouth's unbundled loops. For these reasons, no KMC loops satisfy the Wholesale Trigger.

Even if, as BellSouth and Verizon propose, KMC were to offer wholesale loops to other carriers, deployment of this wholesale offering would require the redesign and upgrade of the fiber network. As with the operational requirements necessary to upgrade KMC's network to a wholesale interoffice transport network, deployment of a wholesale loop offering would also require increased capacity requirements at both nodes on each ring and expansion of space and power at the interconnection node to accommodate additional electronics in the ILEC or IXC central office collocation or at a customer building. At the KMC central office

site KMC would encounter space and support systems constraints. KMC central office facilities were engineered utilizing a modular "switch in a box" concept. These modular buildings were sized for the KMC business model and will not accommodate new business platforms without significant expansion. In some cases the building growth may be subject to property sizes that preclude expansion.

In addition, because KMC's loop facilities are deployed from the customer location to the KMC switch, rather than from the customer location to an ILEC collocation, KMC would also have to provide wholesale transport in order to support deployment of a competitive wholesale loop offering and provide the space requirements of wholesale customers. KMC space and support system designs did not contemplate customer collocations at the wholesale level.

In either case KMC manages its facilities to ensure that capacity levels are optimized to serve the existing and forecasted KMC demand. In the best of cases it would take KMC at least a month to construct outside plant fiber extensions to deliver wholesale services to other carriers. Though KMC customers may accept these intervals to provision their own telecommunications applications, such an interval would not be operationally acceptable to a wholesale customer.

As with any network expansion or new product introduction, the support systems would have to grow. Network element management systems and hardware costs would increase. Network monitoring and

KMC Network Operations Center ("NOC") costs would also increase. Provisioning and billing systems would require growth to support wholesale billing, subscriber usage record exchange and provisioning, and other operational requirements necessary to ensure a seamless service offering.

Finally, the FCC recognized that, as with transport, "the ability to recover the high fixed and sunk costs [of loop construction] is the key factor to considering impairment." ¶ 303, n.884. Unlike BellSouth and Verizon, who as legally protected monopolists, are guaranteed a return on their investments and a captive market share, a wholesale offering by KMC would have to subject to a strict business case analysis which included contractual commitments to ensure reasonable recovery of sunk costs.

E. CLECS MAY BE IMPAIRED EVEN IF A TRIGGER IS SATISFIED

Q. ARE THERE INSTANCES IN WHICH A UNE SHOULD REMAIN AVAILABLE EVEN WHERE THE TRIGGERS ARE SATISFIED?

A. Yes. The *TRO* recognizes that there may be situations where the FCC triggers may be satisfied but a particular CLEC may still be impaired without access to ILEC transport due to factors unique to a carrier's ability to serve a transport route or to changed factual circumstances. For example, a barrier to entry (such as a moratorium on obtaining new rights-of-way) imposed on a particular location by a local government would prevent a CLEC from entering that particular market. *See, e.g.*, ¶¶ 336, 411.

The FCC also acknowledged CLECs face still other special impairments when deploying loops. ¶ 303. These include "the inability to obtain reasonable and timely access to the customer's premises both in laying the fiber to the location and getting it into the building thereafter, as well as convincing customers to accept the delays and uncertainty associated with the deployment of alternative loop facilities." *Id.* Thus, even when it may be "economically feasible" to build a loop to a given customer, these "other barriers" may preclude a carrier from practically using its own facilities to compete with the incumbent. The FCC expressly recognized that incumbents do not face the same disadvantages as competitors. ¶ 306. As legally protected monopolists guaranteed a return on their investments and a captive market share, the ILECs were expected – and affirmatively enabled by local governments and property owners – to build facilities to serve all current (and virtually all future) demand for telecommunications services for every customer within their respective service areas. This allowed them to spread the high fixed costs of loop deployment over both large and small customers, which lowered their per-unit costs. As a result, the ILECs not only have built, but they also are able to maintain and expand, ubiquitous local networks without facing the barriers that new entrants now confront.

The Commission should establish a certification process to enable CLECs to demonstrate that a significant impediment to facilities deployment or use remains even if a trigger were found to be satisfied. In

addition, in cases where the impediment affects a more substantial number of CLECs, the Commission should utilize the waiver process specified in paragraphs 336 and 411 of the *TRO*.

III. TRANSITION ISSUES – ISSUE 20

Q. WHAT TRANSITION MECHANISM SHOULD THE COMMISSION ADOPT IF IT FINDS THAT A DEDICATED TRANSPORT TRIGGER IS SATISFIED?

A. The principal focus of this testimony, at this stage of the impairment proceedings, has been on the criteria relevant to an evaluation of any incumbent LEC claim that competing LECs are not impaired with respect to a particular transport route. Nevertheless, the *TRO* assigns one further role to the state commission that merits mention here. The FCC "expect[s] that states will require an appropriate period for competitive LECs to transition from any unbundled transport that the state finds should no longer be unbundled." *TRO* ¶ 417. The FCC left it to the states to determine the parameters of an "appropriate" transition.

Q. WHAT PRINCIPLES SHOULD GOVERN A TRANSITION?

A. The principles that should guide the setting of an appropriate transition period are straightforward. At a minimum, the Commission should set a transition period that provides competing carriers a reasonable period of time to (1) self-provision the transport in question and (2) continue to offer service using UNEs pursuant to existing contracts. The latter is essential because services to enterprise customers are contract-based and not terminable by a carrier that might face a sudden increase in costs. Because

this is the first time that CLECs face the loss of loops and transport as a UNE, they may face transition situations in multiple jurisdictions where they must migrate customers off such arrangements. Adjusting to such multiple changes will require some time, as well as substantial capital.

Q. WHAT ARE YOUR RECOMMENDATIONS CONCERNING A TRANSITION?

A. We recommend that the Commission develop a multi-tiered transition process such as the one applicable to mass market switching. First, there should be a transition period of nine months in which CLECs may order "new" UNEs on routes where the Commission finds a trigger is met. The FCC noted that "the statutory maximum transition period of nine months will ensure an orderly transition to the new rules" and "is reasonably consistent with the transition period sought by the parties." TRO ¶ 703. Second, CLECs should have a transition period equal to that applied to line sharing and mass market switching, with reasonable partial milestones for intermediate periods. Thus, for example, assuming that the Commission issues its decision in July of this year, except for grandfathered contracts, all loops and transport UNEs should be migrated from the specified routes by October 2006, with one-third of UNE facilities transitioned within 13 months of a finding of no impairment, one-third within 20 months and the remainder within 27 months. Compare ¶ 532 (timeline for mass-market switching). Third, and in all events, a CLEC should not be required to migrate any customer to non-UNE facilities until the end of an existing service contract term. Fourth,

until migrated, all dedicated transport UNEs should remain available at the state-defined TELRIC rate. Finally, the Commission should also adopt an exception process that accounts for the multitude of potential operational problems that may occur when CLECs attempt to construct facilities. If a carrier demonstrates that it is attempting in good faith to construct facilities on a route for which UNE facilities have been eliminated and that it is incurring a specific problem that makes construction within the applicable timeframe unachievable (for example, issues with rights of way), it should be permitted to seek an exception from the Commission consistent with the problem it faces. The CLEC should be permitted to continue to purchase the identified facility as a UNE until the Commission acts on its request.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

KMC Telecom®

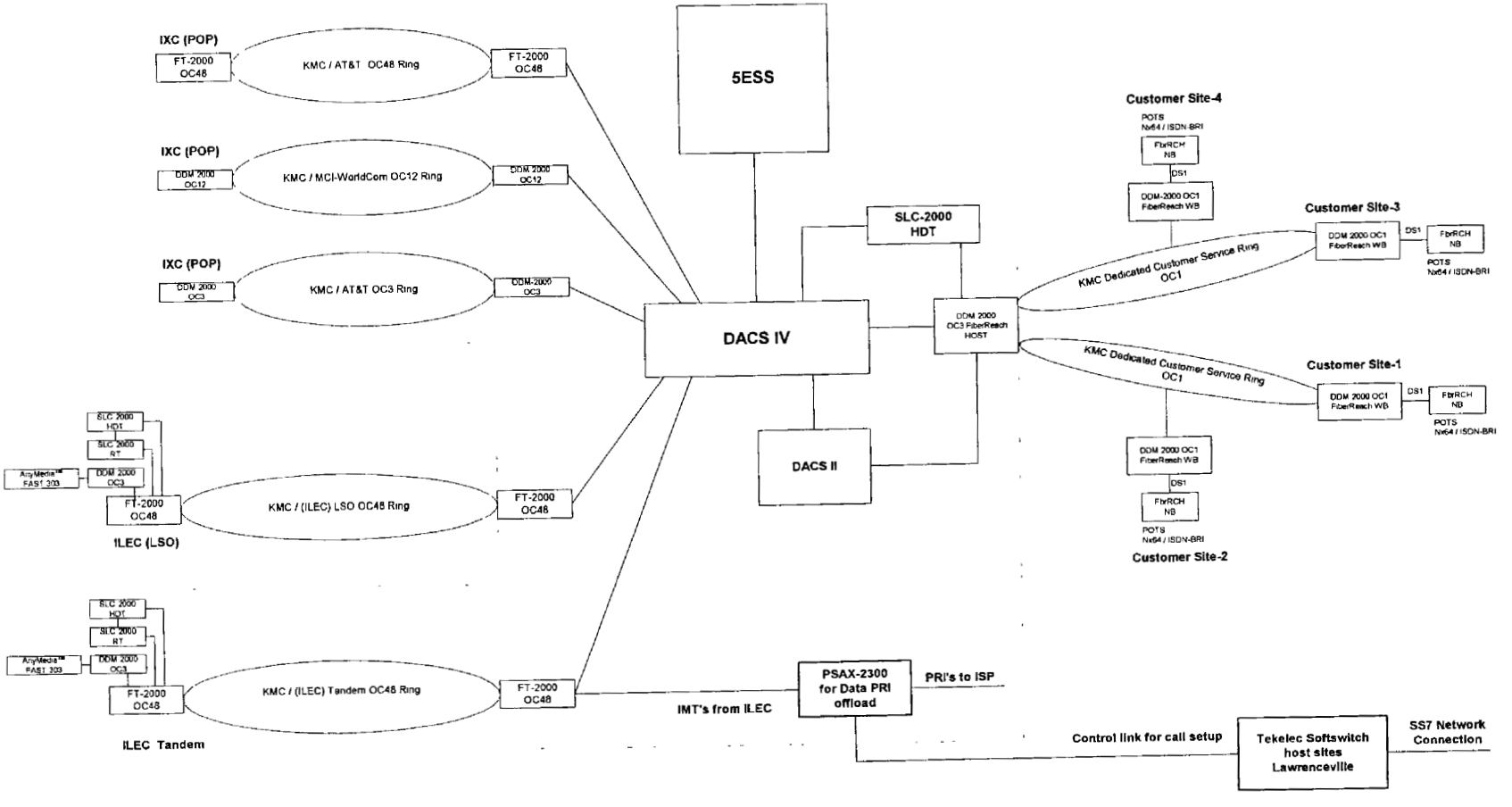
PHONE • DATA • INTERNET – FOR BUSINESS

Docket No. 030851-TP

Witness: Brown Exhibit _____ (MJB-2)

KMC Network Architecture

KMC Central Office



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I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Hand Delivery (*), electronic mail, and/or U. S. Mail this 21st day of January, 2004.

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