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DIRECT LINE: (703) 918-2380

EMAIL: aedmonds@kelleydrye.com

January 18, 2005

**VIA UPS**

Ms. Blanco Bayo  
Commission Clerk and Administrative Services  
Florida Public Service Commission  
2549 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

050043-TP

**Re: Notice of Election of Interconnection Agreement by  
KMC Data LLC**

Dear Ms. Bayo:

Enclosed for filing with the Florida Public Service Commission, please find an original and 12 copies of the above-referenced Notice of Election of Interconnection Agreement of KMC Data LLC ("KMC Data"). By this filing, KMC Data notifies the Commission of its adoption of the interconnection agreement between BellSouth Telecommunications, Inc. and Global NAPS, Inc. pursuant to Section 252(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 252(i), effective as of December 6, 2004.

Also enclosed are a duplicate of this filing and a self-addressed, postage prepaid envelope. Kindly date-stamp the duplicate and return in the envelope provided. If you have any questions concerning this filing, please do not hesitate to contact me at (703) 918-2380.

Respectfully submitted,

*Andrea P. Edmonds*

Andrea Pruitt Edmonds

Counsel to KMC Data LLC

Enclosures

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FPSC-COMMISSION CLERK

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF KMC DATA LLC** )  
**APPLICATION FOR APPROVAL** ) **DOCKET NO. \_\_\_\_\_**  
**OF ADOPTION OF THE INTERCONNECTION** )  
**AGREEMENT BETWEEN BELLSOUTH** )  
**TELECOMMUNICATIONS, INC. AND** )  
**GLOBAL NAPS, INC.** )

**NOTICE OF ELECTION OF INTERCONNECTION AGREEMENT**

In accordance with Sections 251 and 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”), 47 U.S.C. §§ 151 *et seq.*, KMC Data LLC (“KMC Data”) hereby files its Notice of Election of the Interconnection Agreement between BellSouth Telecommunications, Inc. (“BellSouth”) and Global NAPS, Inc. for the State of Florida and respectfully requests that the Florida Public Service Commission (the “Commission”) enter an order acknowledging the adoption of the interconnection agreement, effective as of December 6, 2004.<sup>1</sup> In support hereof, KMC Data states as follows:

KMC Data elects to receive interconnection services in accordance with the terms of the interconnection agreement between BellSouth and Global NAPS, Inc. (the “Global NAPS Agreement”), as approved by the Commission on June 21, 2004 in Docket No. 06369-04. On December 6, 2004, KMC Data notified BellSouth by letter of its intent to adopt the Global NAPS Agreement, but has been unable to reach agreement with BellSouth with regard to certain terms for the adopted agreement. Accordingly, KMC Data is exercising its adoption rights under the Act by making this filing directly with the Commission. A copy of the adoption notice to

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<sup>1</sup> In the event prior Commission approval is not required for adoption of an interconnection agreement under Section 252(i) of the Act, KMC Data respectfully requests that the Commission treat this filing as notice of its adoption of the Global NAPS Agreement, effective as of December 6, 2004.

BellSouth is appended hereto as *Attachment A*. A copy of the Global NAPS Agreement already is on file with the Commission and, thus, is not attached hereto.

Notwithstanding the adoption of a preexisting agreement, KMC Data reserves the right to amend the Global NAPS Agreement to reflect the terms of the Federal Communications Commission's ("FCC") recent decision relating to reciprocal compensation for ISP-Bound traffic. On October 8, 2004, the Federal Communications Commission ("FCC") granted, in part, the *Petition of Core Communications, Inc. for Forbearance under 47 U.S.C. 160(c) from Application of the ISP Remand Order in WC Docket No. 03-171*, ("*CoreComm Forbearance Decision*"). In the CoreComm Forbearance Decision, the FCC granted Core Communications's petition for forbearance from the growth caps and new markets rule established in the FCC's *ISP Remand Order*.<sup>2</sup> The CoreComm Forbearance Decision was made effective as of October 8, 2004 and, consequently, the growth caps and new market rules are no longer effective. Because the Global NAPS Agreement does not reflect the CoreComm Forbearance Decision, KMC Data reserves the right to amend the Global NAPS Agreement to reflect the CoreComm Forbearance Decision once this adoption becomes effective.

In processing this adoption, please include the following contact information for the Notice sections of the KMC Data/BellSouth interconnection agreement:

Marva Brown Johnson  
KMC Telecom  
1755 North Brown Road  
Lawrenceville, GA 30043  
(678) 985-6220 (telephone)  
(678) 985-6213 (facsimile)

and copies to:

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<sup>2</sup> *Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*"), remanded, *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), cert denied, 538 U.S. 1 (2003).

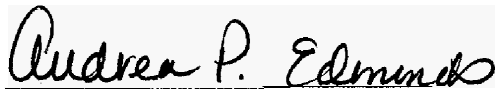
Raymond Pifer  
KMC Telecom  
1755 North Brown Road  
Lawrenceville, GA 30043  
(678) 985-6441 (telephone)  
(678) 985-6213 (facsimile)

In addition, the following contact information should be used solely for the purpose of completing the adoption process:

Brad E. Mutschelknaus  
Andrea Pruitt Edmonds  
Kelley Drye & Warren LLP  
1200 Nineteenth Street, N.W.  
Suite 500  
Washington, DC 20036

WHEREFORE, KMC Data prays the Commission enter an order acknowledging KMC Data's adoption of the Global NAPS Agreement.

Respectfully submitted,

By: 

Brad E. Mutschelknaus  
Andrea P. Edmonds  
Kelley Drye and Warren, LLP  
1200 19<sup>th</sup> Street, N.W., Suite 500  
Washington, DC 20036  
Telephone: (202) 955-9600  
Facsimile: (202) 955-9792

*Attorneys for KMC Data LLC*

Dated: January 18, 2005

**CERTIFICATE OF SERVICE**

I, Andrea Pruitt Edmonds, Attorney for KMC Data LLC, do hereby certify that on this 18<sup>th</sup> day of January 2004 a true and correct copy of the above Notice was sent via first class U.S. mail to:

James Tamplin  
BellSouth Interconnection Services  
675 West Peachtree Street, NE  
Room 34S91  
Atlanta, Georgia 30375

Andrea P. Edmonds

# ATTACHMENT A

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

1200 19<sup>TH</sup> STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

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DIRECT LINE: (202) 955-9868  
EMAIL: kbaraga@kelleydrye.com

December 06, 2004



**VIA EMAIL, FACSIMILE AND OVERNIGHT DELIVERY**

Mr. James Tamplin  
BellSouth Interconnection Services  
675 West Peachtree Street, NE  
Room 34S91  
Atlanta, GA 30375  
James.Tamplin@BellSouth.com  
FAX: 404-529-7839

Re: Notification of KMC Data LLC, Pursuant to Section 252(i) of the Communications Act of 1934, as amended, to Adopt the Interconnection Agreement Between BellSouth and Global NAPS, Inc. for the State of Florida

Dear Mr. Tamplin:

KMC Data LLC ("KMC Data"), by its attorneys, hereby notifies BellSouth Telecommunications, Inc. ("BellSouth") of its adoption, pursuant to section 252(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 252(i) (the "Act"), of the interconnection agreement between BellSouth and Global NAPS, Inc. ("Global NAPS"), dated January 09, 2004, for the State of Florida (the "Global NAPS Agreement"). KMC Data hereby adopts the terms and conditions of the Global NAPS Agreement as the terms and conditions that will govern the relationship between BellSouth Telecommunications, Inc. and KMC Data in the State of Florida.

By execution of this adoption letter and any related correspondence or documentation, neither KMC Data nor BellSouth waives any of its rights or remedies under the Act; the rules, decisions or administrative processes of the Federal Communications Commission or the regulatory utility commissions, agencies, boards or departments in Florida; or under any other applicable law or regulation. KMC Data's adoption of the Global NAPS Agreement does not affect any rights KMC Data has to adopt or negotiate/arbitrate amendments or successor agreements to the agreement formed through this adoption. In addition, this adoption request in

Mr. James Tamplin  
BellSouth Interconnection Services  
December 06, 2004  
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no way impairs or affects the status of KMC Telecom III LLC and KMC Telecom V, Inc., which are parties to an ongoing arbitration proceeding with BellSouth.

KMC Data reserves the right to amend the Global NAPS Agreement to reflect the terms of the Federal Communications Commission's ("FCC") recent decision relating to reciprocal compensation for ISP-Bound traffic. On October 8, 2004, the Federal Communications Commission ("FCC") granted, in part, the *Petition of Core Communications, Inc. for Forbearance under 47 U.S.C. 160(c) from Application of the ISP Remand Order in WC Docket No. 03-171*, ("*CoreComm Forbearance Decision*"). In the CoreComm Forbearance Decision, the FCC granted Core Communications's petition for forbearance from the growth caps and new markets rule established in the FCC's *ISP Remand Order*.<sup>1</sup> The CoreComm Forbearance Decision was made effective as of October 8, 2004, and consequently, the growth caps and new market rules are no longer effective. The Global NAPS Agreement does not reflect the CoreComm Forbearance Decision so KMC Data reserves the right to amend the Global NAPS agreement to reflect the CoreComm Forbearance Decision once this adoption becomes effective.

In processing this adoption, please include the following contact information for the Notice sections of the KMC Data/BellSouth interconnection agreement:

Marva Brown Johnson  
KMC Telecom  
1755 North Brown Road  
Lawrenceville, GA 30043  
(678) 985-6220 (telephone)  
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and copies to:

Raymond Pifer  
KMC Telecom  
1755 North Brown Road  
Lawrenceville, GA 30043  
(678) 985-6441 (telephone)  
(678) 985-6213 (facsimile)

In addition, the following contact information should be used solely for the purpose of completing the adoption process:

Brad Mutschelknaus  
Denise N. Smith

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<sup>1</sup> *Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*"), remanded, *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), cert denied, 538 U.S. 1 (2003).



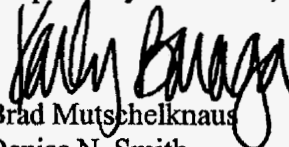
Mr. James Tamplin  
BellSouth Interconnection Services  
December 06, 2004  
Page Three

Kelley Drye & Warren LLP  
1200 Nineteenth Street, N.W.  
Suite 500  
Washington, DC 20036  
(202) 955-9600 (telephone)  
(202) 955-9792 (facsimile)

By sending this letter, KMC Data has fully exercised its rights, under section 252(i) of the Act, to adopt the Global NAPS Agreement. Accordingly, the effective date for the interconnection agreement formed through this adoption is the date of this notice, December 06, 2004. Kindly acknowledge BellSouth's receipt of this notification and agreement to the effective date by executing a copy of this letter in the space provided and returning it to the undersigned counsel. Please contact us at your earliest convenience in order to agree upon a process for the preparation and filing of the interconnection agreement formed through this adoption. Please be advised, however, that KMC Data reserves the right to proceed to file this adoption directly with the Florida Public Service Commission should the undersigned counsel not receive a signed acknowledgement from BellSouth within five (5) business days from the date of this letter.

Thank you for your anticipated cooperation in this matter.

Respectfully submitted,



Brad Mutschelknaus  
Denise N. Smith  
Karly E. Baraga

*Counsel to KMC Data LLC*

cc: Marva Brown Johnson, KMC Data LLC  
Raymond Pifer, KMC Data LLC

Mr. James Tamplin  
BellSouth Interconnection Services  
December 06, 2004  
Page Four

**ACKNOWLEDGED AND AGREED TO:**

**BellSouth**

**BY:** \_\_\_\_\_ **(signature)**

\_\_\_\_\_ **(name)**

**DATED:** \_\_\_\_\_